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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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J. W. MARSHALL, Trustee of the Estate of N. H.  
HICKMAN, Bankrupt,

Appellant,

vs.

ELIZABETH NEVINS,

Appellee.

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Transcript of Record.

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Upon Appeal from the Southern Division of the  
District Court of the United States for the  
Northern District of California,  
First Division.

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Filed

DEC 15 1916

F. D. Monckton,



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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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**Names and Addresses of Attorneys.**

For the Plaintiff:

LLOYD S. ACKERMAN, Esq., San Francisco.

For the Defendant:

W. F. SULLIVAN, Esq., San Francisco.

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*In the District Court of the United States, in and for  
the Northern District of California.*

No. 15,986.

J. W. MARSHALL, Trustee of the Estate of N. H.  
HICKMAN, Bankrupt,  
Plaintiff,

vs.

ELIZABETH NEVINS,  
Defendant.

**Praeceptum for Transcript of Record for Use on Appeal.**

To the Clerk of the Above-entitled Court:

Please prepare transcript of record to be used by plaintiff on appeal from the Judgment of the District Court of the United States, in and for the Northern District of California, rendered October 4, 1916, to the United States Circuit Court of Appeals.

You will please include in the transcript the following documents:

1. This Praeceptum.
2. The Complaint.
3. The Answer.
4. Transcript of the Testimony Taken at the Trial.

5. Exhibits Introduced in Evidence by Plaintiff and Defendant.

6. Opinion and Order of the District Judge.

7. Judgment.

Dated October 25th, 1916.

LLOYD S. ACKERMAN,

Attorney for Plaintiff.

[Endorsed]: Filed Oct. 25, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [1\*]

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[Title of the Court and Cause.]

**Complaint to Set Aside Preference.**

Plaintiff complains and alleges:

I.

That the defendant is now and at all times hereinafter mentioned was a *femme sole*.

II.

That heretofore, to wit, on the 14th day of January, 1916, certain creditors filed in this court a petition in involuntary bankruptcy asking that N. H. Hickman be adjudged a bankrupt. That said petition was numbered 9858 on the files and records of the clerk of this court.

III.

That thereafter, to wit, on the 26th day of January, 1916, said N. H. Hickman filed in this court an answer to the said petition in bankruptcy admitting the commission of an act of bankruptcy under Section 3-A-2 of the Bankruptcy Act. That thereafter, to wit, on or about the 2d day of February,

\*Page-number appearing at foot of page of original certified Transcript of Record.



1916, said N. H. Hickman was by this court duly adjudicated a bankrupt.

## IV.

That heretofore, to wit, on the 23d day of February, 1916, the above-named plaintiff was appointed by the referee in bankruptcy trustee of the estate of the above-named bankrupt and directed to file a bond, and that the plaintiff has qualified as trustee of the estate of the above-named bankrupt, and is now, and ever since the 24th day of February, 1916, has been the duly qualified and acting trustee of the estate of the above-named bankrupt.

## V.

That on the 7th day of December, 1915, and for a long [2] time prior thereto, N. H. Hickman was the owner of a 37/64 interest in a certain American schooner called "William Olsen" of the burden of 490 tons or thereabouts. That on said 7th day of December, 1915, and for more than one year prior thereto, the said N. H. Hickman was insolvent. That on the said 7th day of December, 1915, the said N. H. Hickman being then and there insolvent, sold, assigned, transferred and delivered to the above-named defendant a 73/128 interest in said schooner "William Olsen" and said transfer was recorded in the custom office of the United States in the City and County of San Francisco. That the said N. H. Hickman in his answer filed in the said bankruptcy proceedings admitted under oath the transfer of said interest, to wit, a 73/128 interest in and to the schooner "William Olsen" while he was insolvent to the said defendant Elizabeth Nevins, with intent to

prefer said Elizabeth Nevins over his unsecured creditors.

#### VI.

That the said property transferred by the said Hickman to the defendant was such as his creditors had and have a right to have subjected to their claims. That said property is not exempt property under the provisions of the bankruptcy act.

#### VII.

That the said Hickman intended to and did under and by virtue of said transfer of said property to said defendant prefer the said defendant over his other unsecured creditors, and that the said defendant at the time said transfer was made had reasonable cause to believe that the enforcement of such transfer would effect a preference and also that said Hickman had a present intent to prefer her over his other unsecured creditors.

#### VIII.

That said defendant is the mother-in-law of the said N. H. Hickman. [3]

#### IX.

That at the time of the aforesaid transfer the said Hickman claims to have been indebted to the defendant in the sum of \$8,600, and claims that the said indebtedness was incurred in 1912. That said N. H. Hickman in his schedule in bankruptcy filed in this court admits debts to the amount of \$36,934.40 and assets of the value of \$50.00. That the value of said "William Olsen" is the sum of \$20,000; that demand has been made by the plaintiff upon the defendant to retransfer and redeliver to the plaintiff the afore-

said property so unlawfully transferred by the said N. H. Hickman to the defendant, but that defendant has and does fail, neglect and refuse to deliver to the trustee the said property or its value.

X.

That said schooner "William Olsen" is in active use and under charter and is earning and has earned since December 7th, 1915, and will continue to earn large sums of money.

WHEREFORE plaintiff prays that he may have judgment that the transfer of the aforesaid 73/128 interest in the schooner "William Olsen" by said N. H. Hickman to the defendant was an unlawful preference, and that said transfer be annulled and set aside, that the said defendant be directed to make, execute and deliver to the plaintiff a reconveyance or transfer of said 73/128 interest in said schooner "William Olsen"; that the said plaintiff have judgment against the said defendant for the value of said interest so unlawfully transferred and that the said defendant be required to account for the rents, issues and profits thereof from the 7th day of December, 1915, and that plaintiff have judgment for his costs herein incurred.

LLOYD S. ACKERMAN,

Attorney for Plaintiff.

(Duly verified.)

[Endorsed]: Filed Mar. 6, 1916. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [4]



[Title of the Court and Cause and Number.]

**Answer.**

Now comes defendant, Elizabeth Nevins, and answering complaint of plaintiff herein, admits, alleges and denies as follows:

I.

Admits the allegations contained in paragraph "I" of said complaint.

II.

Admits the allegations contained in paragraph "II" of said complaint.

III.

Admits the allegations contained in paragraph "III" of said complaint.

IV.

Admits the allegations contained in paragraph "IV" of said complaint.

V.

Answering paragraph "V" of said complaint defendant admits that on the 7th day of December, 1915, and for a long time prior thereto, N. H. Hickman was the owner of 37/64 interest in a certain American schooner called "William Olsen" of the burden of 490 tons or thereabouts. And further answering said paragraph "V" of said complaint this defendant says that she has no information or belief upon the matter as to whether the said N. H. Hickman was on the said 7th day of December, 1915, and for more than one year prior thereto or for any length of time or at all, had been insolvent and for

that reason and basing her denial on that ground this defendant denies that the said N. H. Hickman was on the said 7th day of December, 1915, and for more than one year prior thereto [5] or for any other length of time or at all had been insolvent and calls for proof thereof. And further answering said paragraph "V" of said complaint this defendant admits that said N. H. Hickman did on the said 7th day of December, 1915, sell, assign, transfer and deliver to this defendant a 73/128 interest in said schooner "William Olsen," and that said transfer was recorded in the custom-house of the United States, in the City and County of San Francisco, State of California.

## VI.

Answering paragraph "VI" of said complaint this defendant denies that the said property transferred by the said Hickman to this defendant was such as his creditors have and had a right to have subjected to their claims. And further answering said paragraph "VI" of said complaint this defendant alleges that the said transfer of the said property by the said Hickman to this defendant was a good and valid transfer of said property for a good and valuable consideration paid and delivered to the said Hickman by this defendant for and in consideration of said transfer of the said property; and that the said property has not at any time since the said transfer on the said 7th day of December, 1915, by the said Hickman to the said defendant formed and does not now form any part of the property of the said N. H. Hickman, and that the said property is not in any

way subject to any of the provisions of the Bankruptcy Act of the United States, but that the said property so transferred by the said N. H. Hickman to this defendant is now and ever since the said transfer so made as aforesaid on the said 7th day of December, 1915, has been wholly and exclusively the property of this defendant and in her possession. And further answering said paragraph "VI" of said complaint this defendant says that on the said 7th day of December, 1915, or at any time prior thereto she [6] did not know nor had she any means of learning or discovering that the said N. H. Hickman on the said 7th day of December, 1915, was, or at any time prior thereto had been insolvent, if the fact were so.

#### VII.

Answering paragraph "VII" of said complaint this defendant says that she has no information or belief on the matters and things stated in said paragraph of said complaint sufficient to enable her to answer the same and for that reason and basing her denial on that ground this defendant denies that the said N. H. Hickman intended to and did under and by virtue of said transfer of said property to this defendant prefer this defendant over any other of his creditors; and further answering paragraph "VII" this defendant denies that at the time of said transfer so made she had reasonable or other cause to believe that the enforcement of such transfer would effect a preference and that the said Hickman had a present or any intent to prefer her over any other of his creditors.



## VIII.

Admits the allegations contained in paragraph "VIII" of said complaint.

## IX.

Answering unto paragraph "IX" of said complaint defendant admits that at the time of the transfer of the aforesaid property the said Hickman was indebted to the said defendant in the sum of \$8,600. Admits that said Hickman in his schedule in bankruptcy filed in this court admitted debts to the amount of \$26,934.40 and assets of the value of \$50. Admits that demand has been made by the plaintiff upon the defendant to transfer and deliver to the plaintiff the aforesaid property transferred by the said Hickman to the defendant, and that defendant has and does fail, neglect and refuse to deliver to the trustee the said property or its value; but denies that the value of the said schooner "William Olsen" is [7] or was, at the time of the said transfer by the said Hickman to the said defendant, the sum of \$20,000, or that the value of the said schooner "William Olsen" was or ever has been greater than the sum of \$15,000.

WHEREFORE, defendant prays to be dismissed hence with costs.

W. F. SULLIVAN,  
Deft's Atty.

(Duly verified.)

Service by copy of the within Answer hereby admitted this 27th day of April, 1916.

LLOYD S. ACKERMAN,  
Attorney for Plaintiff.

[Endorsed]: Filed Apr. 27, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [8]

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[Title of the Court and Cause and Number.]

**Testimony Taken in Open Court.**

Friday, June 30th, 1916.

Counsel Appearing:

For the Plaintiff: LLOYD S. ACKERMAN, Esq.

For the Defendant: W. F. SULLIVAN, Esq., and  
H. C. LUCAS, Esq.

Mr. ACKERMAN.—If the Court please, this is an action by J. W. Marshall as trustee of the estate of N. H. Hickman, a bankrupt, vs. Elizabeth E. Nevins, to set aside a preference. The complaint alleges that on the 14th day of January, 1916, a petition for involuntary bankruptcy against Hickman was filed, and thereafter, on the 26th day of January, 1916, Hickman filed an answer admitting the commission of an act of bankruptcy, and on the 2d day of February, was duly adjudged a bankrupt. On the 23d day of February the plaintiff in this case appointed by the referee trustee of the estate, and directed to file a bond, and ever since the 24th day of February has been the duly qualified and acting trustee of the bankrupt.

On December 7, 1915, Mr. Hickman was at that time fee owner of a certain interest, 37 sixty-fourths of the steamer called the "William Olsen"; that on that day, and for more than a [9] year prior to December 7th Hickman had been insolvent. On this last-named day, Hickman sold, assigned and

transferred a 73 one-hundred and twenty-eighth interest in the schooner "William Olsen" to the defendant, Mrs. Elizabeth Nevins, who was his mother-in-law. Hickman admitted under the transfer of the 73d one hundred and twenty-eighth of the schooner "William Olsen" with the intent to prefer her over his other creditors. And then and there are the various formal allegations that the property was such as his creditors had a right to have subjected to their claims; that the intent was on behalf of Hickman, to prefer Mrs. Nevins over the other creditors; that the effect was to create a preference, and that Hickman had a present intent to prefer her. That at the time of the transfer Hickman claims to have been indebted in the sum of \$8,600, to the defendant and claims the indebtedness was incurred in 1912. Hickman in his schedule in bankruptcy admits debts to the amount of \$36,934, and assets to the value of \$50. That the value of the schooner "William Olsen" is the sum of \$20,000; that demand has been made by the plaintiff upon the defendant for a redelivery, and that the defendant has refused. It is alleged that the "William Olsen" is now in active use, under charter, and earning considerable profits, and has been during the past year. The gravamen of the action is that portion of the provision of the bankruptcy act which provides that if the defendant in a case knows or has reasonable cause to believe that at the time the transfer was made by the bankrupt to her, that he was insolvent, that that was a transfer which the bankrupt acts voids and makes null; that there are a number of circumstances in-



dicating a knowledge upon the part of the defendant that Hickman was insolvent at the time of the transfer; but in the nature of things that cannot be shown that the defendant had actual knowledge, as that word would come from her own lips. We expect to prove that Hickman has been insolvent for a number of years; [10] that he was in close relationship with his mother-in-law, and she had every reason to suspect that he was insolvent, and unable to pay his debts.

**Testimony of Charles B. Blessing, for Plaintiff.**

CHARLES B. BLESSING, called for the plaintiff, sworn.

Mr. LUCAS.—At this time, if the Court please, I will state that of the four elements which go to make up a preference in matters of this kind, three of the elements are practically admitted. We admit that the defendant has been insolvent and was insolvent at the time he made the transfer. We admit that the transaction was made within four months; we admit that the effect of the transfer must have been to give the creditor a greater percentage than that accrued to other creditors, but we deny that there existed at the time of the transfer a reasonable or other cause for belief on the part of the defendant, Mrs. Nevins, that the transfer was made while the defendant was insolvent, or was made for the purpose of giving her a preference over other creditors. Our defense will be that she was not handling, or knew anything about his business transactions, or had any information or belief that he was in financial embarrassment at the time.

(Testimony of Charles B. Blessing.)

Mr. ACKERMAN.—Q. Mr. Blessing, you are a resident of the City and County of San Francisco?

A. Yes, sir.

Q. Have you been appointed trustee in bankruptcy of the Bay Shore Drayage Company?

A. Yes, sir.

Q. You were summoned here to bring with you the books of the Bay Shore Drayage Company. Did you bring them? A. I did.

Q. I show you what purports to be a minute-book, and ask you if that is the minute-book of the corporation, which was delivered [11] to you by the corporation officers? A. Yes, sir.

Mr. LUCAS.—(Intg.) What is the purpose of it?

Mr. ACKERMAN.—I am going to ask counsel that he permit the introduction of this in evidence, and we will connect it up later, I ask that it be marked.

(The book is marked "Plaintiff's Exhibit No. 1.")

**Testimony of Milton H. Hickman, for Plaintiff.**

MILTON H. HICKMAN, called for the plaintiff, sworn.

Mr. ACKERMAN.—Q. You reside in San Francisco? A. Yes, sir.

Q. How long have you resided here?

A. Since 1890.

Q. When were you married?

A. On October 5, 1897.

Q. You married Theresa Nevine, did you not?

(Testimony of Milton H. Hickman.)

A. Yes, sir.

Q. She is the daughter of Elizabeth Nevine, the defendant in this case? A. Yes, sir.

Q. Since you married, you have resided in San Francisco? A. Yes, sir.

Q. Where does your mother-in-law, the defendant in this case, reside? A. Since I was married?

Q. Yes.

A. She lived in Vallejo at the time of the marriage, I think it was about 7 or 8 years ago—she had two children, and she divided her time between her son and her daughter.

Q. The daughter resided in San Francisco and the son in Vallejo? A. Yes, sir.

Q. What business have you been in during the last few years?

A. The lumber business—lumber business and shipping business.

Q. Were you president and chief stockholder of the Bay Shore Drayage Company?

A. I was president; I was not chief stockholder.

Q. Who was the chief stockholder?

A. T. C. Hickman.

Q. That is your wife? A. Yes, sir.

Q. You were manager of the Bay Shore Drayage Company, were you not? [12]

A. Yes, sir, president and manager.

Q. For how long were you president and manager?

A. Since, I think, the 21st day of May, 1909.

Q. Did that company continue in business until



(Testimony of Milton H. Hickman.)

the day of its bankruptcy, sometime in 1915?

A. Yes, sir; I was president before that, when the company was formed.

Q. The Bay Shore Drayage Company, was it or was it not a profitable business venture?

A. It was not profitable since 1912. It has been profitable.

Q. Since the date of your incumbency as president and general manager of that company, had it ever paid a dividend?

A. Since the time I took it, it paid one dividend.

Q. Since when? A. I think that was in 1905.

Q. That was prior to the time you became manager; I mean subsequent.

A. No, sir; I never had a dollar out of it.

Q. Did you receive a salary as president and general manager? A. Yes, sir.

Q. How much salary did you receive?

A. \$125 a month.

Q. Were you paid that salary regularly?

A. Yes, sir,—not all of the time.

Q. There were times when the corporation was in such financial straits that they were not able to pay you your salary?

A. I left it to my creditors.

Q. At the time of the bankruptcy you had a considerable account against the corporation, did you not? A. Yes, sir.

Q. For salary and so forth? A. Yes, sir.

Q. Since 1909 were you engaged in any other business besides the Bay Shore Drayage Company?

(Testimony of Milton H. Hickman.)

A. Yes, sir, I was in the warehouse business.

Q. What company?

A. The Metropolitan Company.

Q. When did you go into that business? [13]

A. I think it was in the fall of 1910, we first started.

Q. How long did that business continue?

A. It continued until I closed it up, I think it was in October, 1913.

Q. Why did you close it up?

A. Well, it was unprofitable, and it was cheaper to close it up than to lose any more money.

Q. Was that venture ever profitable?

A. No, sir; but I wanted to keep it alive, because I was on the lease.

Q. As guarantor? A. No, sir, as lessee.

Q. As lessee? A. Yes, sir.

Q. Were you caused to lose some money by your lease? A. Yes, sir.

Q. A considerable amount of money?

A. Yes, sir.

Q. How much? A. \$10,300.

Q. When you lost that, at that time, had you made any settlement?

A. Myself, I lost—I paid \$15,000 for my release.

Q. Again restricting you to the period from 1909 to date, were you in any other business besides the Bay Shore Drayage Company and the warehouse company?

Q. Yes, sir. Up to the present time, you mean?

(Testimony of Milton H. Hickman.)

Q. Yes. You may continue up to the date of December 7th, 1915.

A. You mean engaged in, or was interested in?

Q. Were you engaged in or interested in any other business?

A. Yes, sir, I was interested in the Pacific Aero-scope Company.

Q. In what capacity,—as a stockholder or officer, or what?

A. No, I had the company and had a concession, and subsequently turned it over to capital.

Q. Did you receive any stock in that company?

A. Yes, sir, but it was not a profitable stock; I never got a dollar out of it.

Q. Have you been in any business since 1909, that has been profitable?      A. Yes, sir.

Q. Say which one.

A. I was engaged in the lumber business. [14]

Q. Tell us about that, please.

A. I sold lumber foreign, and had a state contract.

Q. When?

A. From the 21st of May, 1909, until, I think, it was in 1912, the last year.

Q. You say that was a profitable enterprise?

A. Yes, sir.

Q. How much money did you make out of that?

A. Well, the money that I made out of that, I increased the plant of the Bay Shore Drayage Company; I paid my debts that I had carried since the days of the fire.

Q. How much money did you make out of that?



(Testimony of Milton H. Hickman.)

A. How much money did I make out of it?

Q. How much money did you make out of the lumber business? A. I should say \$50,000.

Q. Is that clear over expenses?

A. Yes, sir.

Q. You made out of the contract with the state?

A. I sold other lumber, too; that was not my chief business.

Q. You had that business from May 21st, 1909, to 1912? A. Yes, sir.

Q. For how long a time prior to the 7th day of January, 1915, had you been insolvent?

A. I should say,—oh, if my creditors had forced me, I would have been insolvent since 1906.

The COURT.—Q. You mean after the fire?

A. Yes, sir.

Mr. ACKERMAN.—Q. During the past few years you and your wife have been on friendly terms with your mother-in-law, haven't you?

A. Yes, sir.

Q. She has visited at your house from time to time? A. Yes, sir.

Q. With frequency, once a week, once in two weeks, or what?

A. She generally stayed for a period of days when she came; she would visit her son, the same way.

Q. Where have you resided during the past two years? A. Since I have been married?

Q. Yes.

A. I lived for a good many years at 1767 Page Street, I lived there. [15]

(Testimony of Milton H. Hickman.)

Q. In a flat or a house?      A. In a house.

Q. Do you rent that house?      A. No, sir.

Q. You own it?      A. I do not own it.

Q. Your wife owns it?      A. Yes, sir.

Q. Then you moved to Franklin Street?

A. No, sir, I moved twice—my wife has asthma.

We moved until we could get a location that she did not suffer from with asthma.

Q. You lived on California Street, did you not?

A. No, I lived at Van Ness Avenue, and then I moved into the Hotel Majestic; then we moved to an apartment on the corner of Clay and Franklin Streets; then we moved to Ross Valley; the climate did not suit us so we came back here.

Q. During the past few years did you have any conversation with your mother-in-law in regard to business matters?      A. No, sir.

Q. Never spoke to her about business matters?

A. No, sir.

Q. Never discussed with her your financial affairs?      A. No, sir.

Q. Never told her how you were progressing in a material way?

A. I do not think I ever mentioned business except I think I might when I lost the Harbor contract, I might have mentioned it; I would have to go into the commercial business instead of the contract business as far as the teaming end was concerned.

Q. Did she ever ask you how you were getting on?

A. No, I do not think she ever did.

(Testimony of Milton H. Hickman.)

Q. Did you ever have any financial transactions with her?

A. Yes, sir, I have had financial transactions with her.

Q. State the nature of them.

A. That is to say, I borrowed money from her and paid it back.

Q. You say you borrowed money?

A. Borrowed money and paid it back and borrowed it again.

Q. On the 7th of December, 1915, you were indebted to Mrs. Nevins in the sum of \$8,600?

A. Yes, sir. [16]

Q. What was the money owing for?

A. For borrowed money.

Q. Money that she loaned you? A. Yes, sir.

Q. When did you borrow it from her?

A. That covers a period from 1905 on.

Q. Do I understand that you attempted to merge the indebtedness from 1905 on into the shape of a promissory note?

A. No, sir, this \$8,600 covers loans from the 15th of February, 1908, on.

Q. From February 15, 1908? A. Yes sir.

Q. Did you give her a note to cover that indebtedness?

A. Yes, sir,—what the indebtedness was on the 15th day of February, 1912; then I borrowed some more money subsequently.

Q. Did you borrow the subsequent money that you referred to in one amount? A. Yes, sir.



(Testimony of Milton H. Hickman.)

Q. How much did you borrow?     A. \$2,500.

Q. \$2,503.03?

A. She gave me a check for \$2,500, and I gave her a check, but I did not get the money.

Q. What was that money borrowed for?

A. All this money?

Q. No, the second amount, August 26th, 1912.

A. I borrowed that to give the girl \$20.

Q. What girl?

A. The girl in the office; I paid a draft for \$1875, the principal amount.

Q. What was that for?

A. That was a draft from the schooner "William Olsen," at that particular time.

Q. Was that for the purpose of purchasing an interest?

A. No sir; that was a master's draft, and I paid, I did not have the money in the bank, and I subsequently collected the money when the freight came in.

Q. This note of \$6,100 which was referred to as of date February 15, 1912; you say that was a consolidation of previous indebtedness which you had incurred?     A. Yes, sir. [17]

Q. In what amounts were those sums borrowed from the smallest amount to the largest amount?

A. I have a statement of it.

Q. Where is it?

A. I borrowed on February 15, \$1,250.

Q. What was that for?

A. What did I do with that?

(Testimony of Milton H. Hickman.)

Q. I was in the plaster business; I was backing a fellow in the plaster business; I used the money for that. On the 21st I got \$1,250 more, on the 21st of February.

Q. What was that used for?

A. The same thing.

Q. The next amount.

A. On October 17th, same year, I got \$500 more.

Q. What did you use that for?

A. The same thing. On the 24th I got \$2,500 more.

Q. For the same thing?      A. Yes, sir.

Q. The next item.

A. On November 14th, 1908, I collected from Hickman & Masterson \$409.60.

Q. Is that a credit?

A. Yes, sir, I credited her up with it.

Q. Did you pay it to her?      A. No, sir.

Q. How do you figure it as a credit then?

A. In November, 1906, I paid her \$8,600, in November, 1906.

Q. All right.

A. This \$409.60 was the last payment; I had dissolved from the Hickman & Masterson copartnership; I had got out of the corporation; I had collected two amounts from them; that is part of the money of the drayage company and part of the book accounts; I collected \$409.60 on November 14, 1908, and on December 29, I collected \$1500.

Q. I do not understand why the amount of \$409.60 appears as a credit and was not paid.

(Testimony of Milton H. Hickman.)

A. When I left the corporation of Hickman & Masterson Company, I assumed and took over the Bay Shore Drayage Company, I took over the Harbor Commission's contract. I assumed all the old indebtedness of Hickman & Masterson at the time of the fire, and gave him \$6500 in cash to get my release. This \$1500 I used to [18] get my release.

The COURT.—How did you charge that?

A. At that time there was \$1500,—I was in the lumber business, I had a partner, we had an incorporation, and we called it the Bay Shore Company. When we burned up we were solvent, and afterwards we got an extension of time; we later on incorporated, and on October 1st, 1908, I left the company and that money that I owed my mother-in-law at that time, stood part to her credit in the drayage company and part on the books of the lumber company, and when I settled with them I got \$409.60 from the lumber end and \$1500 from the teaming end, when I left there. I asked permission to use that money and I used that money that year.

Q. Then you did not credit this \$409.60 on that statement?

A. Yes, sir, I collected the money from her and put it in the bank.

Q. You actually used the money, did you not?

A. Yes, sir, later on.

Q. So that the item of \$409.60 is not to be credited as against the sums which were due at that time, to Mrs. Nevins? A. Are not to be credited?



(Testimony of Milton H. Hickman.)

Q. On your account?

A. I collected it for her.

Q. You did not take credit?

A. No, I debited the bank.

Q. You owed her the money?      A. Yes, sir.

Q. Give the next account after the \$409.60.

A. *Thwas* on April 10, \$34.40, for taxes. I gave her credit.

Q. Did she give you the money for those taxes?

A. Yes, sir, that was on April 4th, 1910.

Q. On July 21st?

A. On July 21st, 1910, I gave her credit for \$125, that was an assessment on the schooner "William Olsen."

Q. Did she give you a check for that amount?

A. I do not remember whether she gave me a check or not; I debited her—no, sir, she did not give me a check; she gave me a [19] check on December 18th, 1909—not a check, but the coin. I am merely giving you the credits.

Q. I want to find out the items that she paid you money on, and the amounts. The last item you gave was \$409.60?      A. Yes, sir; December 29, \$1,500.

Q. What year?

A. 1908. November 14th, 1908, \$409.60.

Q. Go on.

A. April 14, 1910, \$34.40 for taxes. July 21st, I have it here, \$125.

Q. I understand you to say that she did not give you the money to pay; did she give you the money

(Testimony of Milton H. Hickman.)

for that \$125 to pay the assessment on the "William Olsen"?

A. Yes, sir, \$125; that is right; no, on December 18, 1909, I paid \$125. I have her *charged that* on account of the "Olsen" and on the 21st of July, 1910, I collected it back, as I had it charged her, that \$125, in December, 1909; I gave her credit for that money on July 21st, 1910. October 31st, 1910, for taxes, \$70.

Q. Did she give you the money for that?

A. Yes, sir. On February 15, 1912, I gave her credit for \$968.96, interest.

Q. At what rate? A. At 5 per cent.

Q. From what date?

A. Covering all the other debits given here.

Q. You gave her interest by credit covering 5% on the amounts from the time they were borrowed until that time. Is that correct?

A. Yes, sir; the notes originally were 7%, but Mr. Greenwald was only charging me 5%, and I only give her 5%.

Q. On February 16, 1912, that indebtedness was merged into a note for the sum of \$6,100?

A. Yes, sir.

Q. Did you pay interest on that note?

A. The 6100-dollar note?

Q. Yes.

A. No; pardon me, you are mistaken; that is the total amount of the advances, \$6,607.96.

Q. Why did you give her a note for \$6,100?

A. Because I have her charged, on November 30,

(Testimony of Milton H. Hickman.)

1908, the taxes on the Page Street property, \$32.68, and on July 2d, 1909, I paid [20] for the McEnerney Act \$25, and notary fees, 50 cents—

Q. What do you mean, “you have her charged”? Do you mean you borrowed the money from her and paid that, or you charge her account?

A. Her property adjoins my wife’s and we cleared it through the McEnerney Act so as to save the expense, but I paid the entire bill, and paid her.

Q. You took credit for the sum between \$6,607.96 and the sum of \$6,100?

A. I disbursed this money.

Q. You took credit for it?

A. I charged it to her and took credit for it.

Q. The note of \$6,100 bore interest at what rate?

A. At the rate of 5%.

Q. From the date that note was made, did you pay interest on it, on the note of \$6,100, at the rate of 5% per annum? A. When I credited this interest.

The COURT.—Q. After the time you gave this note for \$6,100, did you pay your mother-in-law any interest? A. No, sir.

Mr. ACKERMAN.—Q. She gave you a check on August 26, 1912, for \$2,500? A. Yes, sir.

Q. Did you pay interest on that? A. No, sir.

Q. Was the Bay Shore Drayage Company indebted to Mrs. Nevins? A. Yes sir.

Q. For how much?

A. There was a note of \$2,100, a balance of \$2,100; then there was some other moneys.

Q. Do you remember when they were borrowed?



(Testimony of Milton H. Hickman.)

A. No, sir; they were entered up by the quarter.

Q. Were they borrowed in a lump sum or in small amounts?

A. Notes that I had collected and set to her credit, and they [21] credited it; one small amount of \$600, I think it totaled.

Q. I am going to ask you how you reconcile the statement you made a while ago that you never discussed with Mrs. Nevins any financial matters and the statement that you have just testified to that you have borrowed on various occasions from her considerable sums of money?

A. I never asked her for a dollar in my life.

Q. How did you get it?      A. I spoke to my wife.

Q. You spoke to your wife?      A. Yes, sir.

Q. Did she ever ask you why you did not pay interest on this indebtedness?

A. No, sir; I did pay her lots of interest.

Q. By credit?

A. No, sir. I paid her in this balance of \$409.60; I paid her interest from 1905 to 1909.

Q. So you began your financial transactions with Mrs. Nevins in 1905. Is that correct?

A. I think it was in 1905.

Q. At various times during the past few years you had been, I believe, so embarrassed for ready money that you were compelled to borrow for almost the necessities of life?      A. No, sir.

Q. Have there not been times when you could not pay your rent when it became due?

A. I had no rent to pay.

(Testimony of Milton H. Hickman.)

Q. You testified that you moved from the family residence on Page Street to Franklin Street and then to the Majestic Hotel; why do you say you had no rent to pay?

A. My home was rented, that money was coming in; that offset the other.

Q. How much did you get for it?      A. \$45.

Q. You mean to say that you paid your bill at the Majestic Hotel with that?      A. No, sir. [22]

Q. I am asking you if you were not so embarrassed that you did not have the money to pay for the necessities of life, which includes your board and lodging?

A. No, sir, I was never embarrassed until after the 24th day of January, 1915.

Q. You never stated to anyone that you required money to pay your rent and for the necessities of life?

A. Yes, sir; I might have said that I required that because I was, from March, 1915, up to the end of 1915, I was devoting my exclusive time to the Bay Shore Drayage Company, and I was doing that work without drawing pay.

Q. Have you ever been sued?      A. Yes, sir.

Q. Take your memory or recollection back to 1909, and tell me whether or not you were sued during 1909?      A. Yes, sir, I was sued in 1909.

Q. By whom?

A. Charles Nelson; we were fighting over a stencil crate, the ownership of it. He got a judgment of \$56; I paid it to him before he left.

(Testimony of Milton H. Hickman,)

Q. In 1910 were you sued? A. No, sir.

Q. In 1911? A. I don't think so, no, sir.

Q. In 1912?

A. I don't think I was sued until 1914.

Q. When in 1914 and by whom, and for what?

A. I was sued by the Albion Lumber Company.

Q. What for? A. I think for \$1200.

Q. Did they get a judgment?

A. Yes, sir, I did not fight it.

Q. It went by default?

A. Yes, sir, I admitted it.

Q. They got judgment in 1914?

A. I think it was in 1914.

Q. Did you pay the judgment?

A. I gave them security.

Q. You gave them security in the Pacific Aero-scope Company? [23] A. Yes, sir.

Q. Have you paid this judgment? A. No, sir.

Q. Is the stock of any value whatever at the present time? A. No, sir.

Q. Did they dismiss the judgment of record upon obtaining that security?

A. They agreed to dismiss the judgment.

Q. If they got the money from the stock?

A. Yes, sir.

Q. The judgment was unsatisfied of record. Is that correct? A. I think so.

Q. Who else sued you?

A. I think that was the only one.

Q. Were there any justice court suits?

A. In 1914, no, sir.



(Testimony of Milton H. Hickman,)

Q. Any time prior to December 7th, 1914?

Mr. LUCAS.—That is objected to as irrelevant, incompetent and immaterial.

The COURT.—It probably would be unless knowledge of the fact were brought home to Mrs. Nevins. I assume that you are going to connect the defendant with knowledge; otherwise it is immaterial.

Mr. ACKERMAN.—I do not propose to connect up the defendant in this case with knowledge of these matters otherwise than indirectly; I cannot do it, because I have no means to prove that the defendant in this case had actual knowledge of these matters other than the circumstances offered. I take it to be the law that there is a public record showing an unsatisfied judgment against this man, and if I prove his general reputation was that he was insolvent, and that on various occasions he had borrowed money, and did not pay the interest or principal, I take it that such circumstances would induce a prudent and reasonable person to believe that Hickman was insolvent all during this period. She is charged with the same standard of conduct that is [24] applicable to business men. It so happened that he borrowed this money from his mother-in-law.

The COURT.—The mother-in-law may not have investigated the financial standing of the son-in-law with the same critical eye that a business man or bank would.

Mr. ACKERMAN.—Under the law she is charged with the same degree of prudence and skill in her



(Testimony of Milton H. Hickman,)

affairs as a bank or business man would be; that is the situation in this case, that instead of borrowing from the brother-in-law, he borrowed it from the mother-in-law. The creditors cannot be produced. I am prepared to submit authorities on that point.

Mr. LUCAS.—I submit that the objection is well taken unless he can bring notice of the fact home to the defendant.

Mr. ACKERMAN.—Q. You were going to tell us about justice court suits?

A. I was managing owner of the bark "Lurline."

Q. State who brought suits against you, and if the judgments were paid?

A. No, they were not all paid; part were paid and part were not paid.

Q. How many were not paid?

A. I think there was liability insurance brought against me on account of the bark "Lurline," that was unpaid.

Q. When was that judgment recovered?

A. When was it obtained?

Q. Yes, sir.

A. Somewheres in June, 1914, and 1915; somewheres along there.

Q. On the occasion when you borrowed this money from Mrs. Nevins, do you contend that you never discussed those financial affairs, nor did you make any direct demand upon her for the money?

A. No, sir.

(Testimony of Milton H. Hickman,)

Q. In each case you went to your wife and asked her to get the money?

A. I went to her and asked her to ask my mother-in-law.

Q. You would receive the money and you would have to make no [25] explanations?

A. No, sir.

Cross-examination.

Mr. LUCAS.—Q. I show you a check bearing date February 15, 1908, signed Lizzie Nevins, payable to M. H. Hickman. Tell me what that check is?

A. That check is dated February 15, 1908, marked No. 2, drawn on the German Savings & Loan Society for \$1250, payable to the order of N. H. Hickman, signed Lizzie Nevins.

Q. Did you receive that money?

A. Yes, sir, I collected it from the bank.

Q. That is one of the sums of \$1250 that you testified to already? A. Yes, sir. I got the account.

Q. That is Mrs. Nevins' signature?

A. Yes, sir.

Mr. ACKERMAN.—Do I understand, Mr. Lucas, that it is your intention to offer entries in support of the items that he has testified to?

Mr. LUCAS.—Not all of them. There may be some question in your mind that he ever did get this money. I want to show, as a matter of fact, that Mr. Hickman did get the sums of money.

Mr. ACKERMAN.—I object to it on the ground that the showing of one or two or three entries is not material.

(Testimony of Milton H. Hickman,)

The COURT.—This is your witness. He has testified to certain notes. Counsel offers the *notes* in support of that. The objection is overruled.

Mr. LUCAS.—I offer these in evidence.

(The papers are marked Defendant's Exhibit "A.")

Mr. LUCAS.—Q. Kindly state what that check is (showing).

A. That is a check dated February 21, 1908, Number 3, German Savings & Loan Society. Pay to the order of Hickman, \$1250, sign—Lizzie Nevins.

Q. Did you receive the amount of money mentioned in that check? [26] A. Yes, sir.

Q. You cashed the check? A. Yes, sir.

Q. Is that sum of \$1250 the second sum you spoke of as having received from Mrs. Nevins?

A. Yes, sir.

Mr. ACKERMAN.—I would like to know, is it your position in this case that the money alleged to have been paid by the defendant—

Mr. LUCAS.—It is conceded that on December 7, 1915,—it is admitted that on December 7, 1915, Mr. Hickman, the witness, was indebted to Mrs. Nevins, the defendant in this action, in the sum of \$6100 and interest, on a promissory note bearing date February 15, 1912, and upon the further sum of \$2500, borrowed by the witness from the defendant on August 26, 1912, and that no interest upon either had ever been paid by the witness to the defendant.

Mr. ACKERMAN.—It is so stipulated.



(Testimony of Milton H. Hickman,)

Mr. LUCAS.—Q. How long have you known Mrs. Nevins? A. Since 1894.

Q. When were you married? A. In 1897.

Q. You knew her three years before you married her daughter? A. Yes, sir.

Q. Have you been familiar with Mrs. Nevins' business affairs for a number of years?

A. No, sir, I didn't have anything to do with her business affairs, except I paid some taxes on her property.

Q. How old is Mrs. Nevins?

A. I think she is 64.

Q. To whom was she married?

A. Her husband was James Nevins.

Q. What was his business?

A. He was on Mare Island. He died the year 'after we were married.

Q. Her husband always supported her?

A. Well, she had money of her own. Her father, my wife's grandfather, had some money.

Q. She inherited money from her father?

A. Her father had the Vallejo Ferry Company.

[27]

Q. How large a sum of money did she inherit?

A. I don't know.

Q. Do you know what her income has been during the last five or six years?

Mr. ACKERMAN.—That is objected to as irrelevant, immaterial, incompetent and not cross-examination.



(Testimony of Milton H. Hickman,)

A. I don't know anything about her business affairs.

Mr. ACKERMAN.—I ask that the answer go out.

The COURT.—He says that he does not know. Let it go out.

Mr. LUCAS.—Q. During your direct testimony you testified that since the marriage of Mrs. Nevins' son she has visited back and forth between your home and the son's home. Is that correct?

A. Yes, sir.

Q. While she was visiting at your home, how often would you see her?

A. I would see her generally at the dinner table, in the evening.

Q. Are you in the habit of discussing your business affairs with your wife when you are at home nights?

A. No, sir, I never discuss anything at home.

Q. Did you ever discuss any business at all with your wife in the presence of Mrs. Nevins?

A. No, sir.

Q. During the last six or seven years that Mrs. Nevins has been visiting back and forth and visiting at your house, has your mode of living changed in any way? A. No, sir.

Q. Did Mrs. Nevins ever pay any of the household debts, did you ever ask her to pay any debts, or your wife's?

A. No, sir, except I think it was February 15, 1916, after I was insolvent, I believe she paid the house rent. The man came to the door and she gave

(Testimony of Milton H. Hickman,)

him the money. I was not present and never asked her, but she paid it.

Q. Is Mrs. Nevins acquainted with any of your business associates? [28]

A. No, sir, except Mr. Kern.

Q. She never had any discussions that you know of with Mr. Kern about business? A. No, sir.

Q. When judgments were gotten against you, as have been testified here, did you come home and tell her about it? A. No, sir.

Q. In other words, you kept your business affairs strictly to yourself, is that the truth of it, Mr. Hickman? A. Yes, sir.

Q. Did any creditors come to the door and Mrs. Nevins go to the door?

A. No, sir, they always came to the office.

Q. You supported your family in ordinary good style, didn't you? A. Yes, sir.

#### Redirect Examination.

Mr. ACKERMAN.—I understand you to say in answer to a question by counsel that you never discussed business matters at home. Is that correct?

A. No, sir, never discussed them.

Q. Never discussed them with Mrs. Nevins or Mrs. Hickman? A. No, sir.

Q. How did you proceed to get Mrs. Hickman to go to your mother-in-law to obtain the money that you borrowed from Mrs. Nevins?

A. That was in the privacy of my own room.

Q. You did discuss it in the privacy of your own room?

(Testimony of Milton H. Hickman,)

A. Yes, certainly, in that way. These various moneys that I got from her, I went to my wife and asked her to ask her mother.

Mr. LUCAS.—Q. Do I understand you that you never discussed your business generally with your wife?

A. No, sir, I never told my wife I lost a dollar.

Q. But when you wanted money to put in some special business you asked your wife concerning it?

A. Yes, sir. [29]

**Testimony of O. H. Greenwald, for Plaintiff.**

O. H. GREENWALD, called for the plaintiff.  
Sworn.

Mr. ACKERMAN.—Q. Mr. Greenwald, you reside in San Francisco? A. Yes, sir.

Q. For how many years have you resided here?

A. 50.

Q. Are you acquainted with N. H. Hickman?

A. Yes, sir.

Q. For how long have you known him?

A. Approximately 26 years.

Q. During that time, have you had business relations with him? A. Yes, sir.

Q. During all of that time? A. More or less.

Q. Commencing about the time of your first acquaintance with him?

A. Yes, sir, he was in my employ, when I first knew him.

Q. Will you give, Mr. Greenwald, a brief history of your business relations with Mr. Hickman?



(Testimony of O. H. Greenwald.)

Mr. LUCAS.—I object to that as immaterial.

Mr. ACKERMAN.—I am going to qualify the witness to testify to his general reputation as to solvency or insolvency.

Mr. LUCAS.—It is admitted here that he is insolvent, unless his general reputation is brought home to the defendant in this action, it is immaterial.

The COURT.—Do you admit that his reputation was that of insolvency?

Mr. ACKERMAN.—Will you admit, Mr. Lucas, that this witness is qualified to testify as to his general reputation as to solvency or insolvency.

The WITNESS.—I first got acquainted with Mr. Hickman by looking for a clerk in my office when I was in the lumber business; I think that was in 1890. He was in my employ for a number of years after that, until about up to 1896, approximately 1896; subsequently, another employee, a man by the name of Masterson, and Hickman were financed by myself to enter into the lumber business, succeeding, to a certain extent, the business of the Golden Gate Lumber Company, which was then dissolved. They [30] continued in that business until the time of the fire and earthquake in 1906. The fire was very disastrous; they lost a large stock of lumber, and after the fire were in a very bad way financially.

Q. What business did Mr. Hickman engage in next after that?

A. After that he got into the drayage business, in the Bay Shore Drayage Company. The business



(Testimony of O. H. Greenwald.)

of Hickman & Masterson was subsequently united in some way with a man by the name of Mickerson; I don't remember the name of the company, but they were mixed up with some company in the north; I cannot recall the name.

Q. Were you interested in the Bay Shore Drayage Company to any extent?

A. I was a creditor of the Bay Shore Drayage Company. I never had any stock in it; I loaned them in it; I loaned them.

Q. Do you know of your own knowledge whether the Bay Shore Company was a profitable concern at any time?     A. Yes, sir, at one time they were.

Q. How long ago?

A. That was shortly after the fire, may be a year or so.

Q. Mr. Hickman owes you some money, does he not?     A. Yes, sir.

Q. For how long has he owed you money?

A. Prior to the fire and earthquake of 1906; just how long I don't know.

Q. You have made frequent attempts since that time to collect your money?

A. Yes, sir, in various ways.

Q. During the time from 1906 up to the date of his insolvency, were you in close touch with Mr. Hickman's business affairs and business activities?

A. Yes, sir.

Q. Did you see him on occasions, or many times?

A. I used to see him periodically; that is to say, two or three times a week. I guaranteed a note for

(Testimony of O. H. Greenwald.)

him at the bank and had to hunt him up to meet it. He never came around; that is, when I say [31] "never," I mean unless I sent for him. Subsequently, in 1915, I saw him pretty nearly every day.

Q. Do you know what Mr. Hickman's general reputation in the community has been for the past five years for solvency or insolvency; answer "Yes" or "No." A. Yes, sir.

Q. What has been his reputation for solvency or insolvency in the community in which he lives?

A. His reputation is that he was insolvent.

Q. Have you discussed Mr. Hickman's reputation for solvency or insolvency with other persons from time to time? A. Yes, sir.

Q. Have you heard other persons speak of him?

A. Yes, sir.

Q. Did you ever hear anyone express an opinion regarding his solvency or insolvency?

A. I have heard people express the opinion that they would not give him credit.

Q. During 1915 you had some financial transaction with the Bay Shore Drayage Company, did you not?

A. Yes, sir.

Q. At that time you agreed to loan them money?

A. Yes, sir.

Q. Are you acquainted with Mrs. Nevins, the defendant in this action? A. Yes, sir.

Q. With Mrs. Nevins? A. Yes, sir.

Q. You testified that you had advanced money to the Bay Shore Drayage Company? A. Yes, sir.

Q. At that time you advanced that money, did you

(Testimony of O. H. Greenwald.)

have anything to do, directly or indirectly, with Mrs. Nevins, the defendant in this action?

A. Yes, sir.

Q. State what it was.

A. Mrs. Nevins had a claim against the drayage company for a note, an open account in the neighborhood of \$2,800 or \$3,000, and I offered to assist Mrs. Hickman in his drayage business provided Mr. Nevins and he would waive their claims until I was repaid for any advances made to the drayage company. [32]

Q. Did you enter into an agreement to that effect?

A. Yes, sir.

Q. To which Mrs. Nevins was a party?

A. I had that proposition because I wanted Mrs. Nevins to be notified of the condition of affairs in that.

Q. I show you a paper which purports to be between you and the Bay Shore Drayage Company and ask you if you can identify that paper?

A. Yes, sir, I identify it.

Q. Do you know the signature attached to the agreement? A. Yes, sir.

Mr. ACKERMAN.—I offer it in evidence and ask that it be marked.

(The agreement is marked "Plaintiff's Agreement No. 2.")

Mr. LUCAS.—That is objected to upon the ground that it is immaterial, irrelevant and incompetent.

Mr. ACKERMAN.—It simply states that Mrs. Nevins agrees to defer collection in event of the



(Testimony of O. H. Greenwald.)

advances of certain money. It is evidence that charges Mrs. Nevins, the defendant in this case, with knowledge of the financial condition of Mr. Hickman, who was at the time manager and a general stockholder.

Mr. LUCAS.—Q. Did you ever meet Mrs. Nevins?

A. Yes, sir.

Q. When?

A. I remember very definitely meeting her at the Sausalito Ferry about 3 or 4 or 5 summers ago while Mr. Hickman and his wife and mother and brother-in-law were contemplating going across the bay.

Q. Did you discuss business with her?

A. Personally no, not directly.

Q. Did you discuss with Mrs. Nevins any of the circumstances leading up to the signing of that agreement? A. I did not.

Q. Do you know personally that she did sign it?

A. Yes, sir.

Q. Do you recognize her signature?

A. Yes, sir.

Q. Have you ever seen her signature before?

A. I have.

Q. You positively identify that as her signature?

A. I do.

Q. How do you know?

A. Because Mrs. Hickman signed her name to [33] that document as being a witness to that signature, and I have known Mrs. Hickman over 20 years, and I know she tells the truth.

Q. You yourself did not go or send anyone to dis-



(Testimony of O. H. Greenwald.)

cuss the signing of that agreement with Mrs. Nevins? A. Yes, sir.

Q. Who did you send? A. Mrs. Hickman.

Q. She was acting as your agent?

A. She was in my office before that agreement was signed, and the condition and circumstances were discussed.

Q. Mrs. Nevins was not present?

A. No, sir; that is why I asked Mrs. Hickman to witness the signature of Mrs. Nevins; because I was not present when Mrs. Nevins signed that paper.

Mr. ACKERMAN.—I offer it in evidence.

Mr. LUCAS.—I urge the same objection.

The COURT.—The objection is overruled.

(The document is marked "Plaintiff's Exhibit No. 2.")

Mr. ACKERMAN.—Q. At that conversation to which you have referred as having taken place between you and Mrs. Hickman, what was said in regard to this agreement, or anything else?

Mr. LUCAS.—That is objected to as hearsay.

Mr. ACKERMAN.—Q. Was anything said at that conversation about that agreement with reference to anything due Mrs. Nevins?

Mr. LUCAS.—That is objected to as incompetent, irrelevant and immaterial.

The COURT.—The objection is overruled.

Mr. LUCAS.—Exception.

A. I wanted Mrs. Nevins to sign that agreement so that she could not have her claim paid before any advances made by me were paid off.

(Testimony of O. H. Greenwald.)

Mr. ACKERMAN.—Q. Did you ever ask Mrs. Nevins to guarantee any indebtedness to you of N. H. Hickman? A. Indirectly, yes, sir.

Q. What do you mean by “indirectly”?

A. I never had any conversation with Mrs. Nevins; I had a conversation with Mrs. [34] Hickman about it.

Q. What did you say to Mrs. Hickman?

A. I told Mrs. Hickman—

Mr. LUCAS.—That is objected to as hearsay, and I urge the same objection.

The COURT.—The objection is overruled.

Mr. LUCAS.—Exception.

A. (Continuing.) I told Mrs. Hickman the conditions that existed; I told her that Mr. Hickman was indebted to me in certain sums, which I specified at the time, and told her that I wanted to have some settlement in this matter. That was on Thanksgiving Day, 1915; I went to her house with Mr. Hickman.

Q. You went to whose house?

A. Mrs. Hickman’s house, on Thanksgiving Day, 1915, and took Mr. Hickman with me for the purpose of discussing this very thing. I wanted Mrs. Hickman to thoroughly understand the conditions about Mr. Hickman’s advances, and I told her that I had advanced up to about \$10,000 to the Bay Shore Drayage Company, this account that I guaranteed a note for him at the bank; that he owed certain other notes and that I thought I should have a preference. I told her I was through and was not

(Testimony of O. H. Greenwald.)

going to advance any more, and wanted some settlement with her. I told her that if Mrs. Nevins would guarantee the money that I advanced to him during 1915 and the note that I had guaranteed at the bank, that I would settle the matter of indebtedness with them for all time. She said they could not do it. I asked her whether they would turn over the schooner "William Olson" and let me manage for them, give them an account, and apply a reasonable amount to settle their indebtedness with me. She said no, I will not give up that ship, if we give that up we have got nothing left. So I said, "You let your mother guarantee the money and you keep the ship." We discussed this thing all over, and finally she said, "I will speak with my mother about [35] it and see what I can do"; so I left.

Q. Did Mrs. Hickman report to you a conversation with her mother about that settlement?

A. She did not personally; Mr. Hickman did.

Q. What did Mr. Hickman say?

A. A few days after that, the early part of the week, I asked Mr. Hickman what Mrs. Hickman had done concerning our conversation. He said, "Well, she has gone up to Vallejo."

Q. Who does he refer to when he says "she"?

A. Mrs. Hickman; Mr. Hickman spoke to his wife; that she was going to Vallejo that day to see what she could do about that. A few days afterwards I asked him what had been done. He got very vehement and very much excited, and flared up and pounded on the table and on the desk with his hand



(Testimony of O. H. Greenwald.)

and said, "You will never get that boat, you cannot have that boat," in a very vehement way. Subsequently I found out from the records that he had transferred it.

Q. You never received word from Mrs. Nevins other than this conversation you had with Mr. Hickman in which he said you would never get that boat; you did not get any other word?

A. No, that is the last I ever heard of it. I found out subsequently that the boat had been transferred on the 7th of December, I think it was.

Cross-examination.

Mr. LUCAS.—Q. How much money did Mr. Hickman owe you at the time of the fire?

A. I could not tell you that from memory.

Q. Well, roughly? A. I do not know. [36]

Q. Has any of that been paid?

A. I don't think so; I am not sure of it.

Q. Is it not true that he paid you everything that he owed you at the time of the fire?

A. I do not know; I cannot tell from my memory.

Q. How long has Mr. Hickman enjoyed the reputation of being bankrupt, that you have testified about?

Mr. ACKERMAN.—I object to the form of the question.

A. It has been a long time since he had no credit.

Mr. LUCAS.—Q. How long has Mr. Hickman had the reputation of not being able to pay his debts?

A. To my knowledge at least a year and a half or two years.



(Testimony of O. H. Greenwald.)

Q. But you have been doing business with him, have you not?     A. Yes, sir.

Q. Now, I will show you a letter dated March 29th, 1914; is that your letter?

A. Yes, sir, that is my letter.

Mr. LUCAS.—I will offer it in evidence.

Mr. ACKERMAN.—No objection.

(The letter is marked Defendant's Exhibit "B.")

Mr. LUCAS.—Q. What does that letter refer to?

A. To the fact that Mr. Hickman should interest himself and some of my friends in the schooner "William Olson" on the basis, I think, of \$12,000 for the entire valuation of the ship; and I had a subsequent offer of \$15,000. I wanted to act decent with him. He had waived his option to purchase that by not meeting the deposit at the time it was due. In order to be decent and square with him I wrote him that letter and tried to tell him, to show him the facts.

Q. You sold him an interest in the "Olsen."

A. Yes; I could have sold it for \$15,000. If he had been a stranger—he made a default on the cash payment—I could have sold the ship at a profit of 25 per cent more. [37]

Q. You got paid your money for that ship, did you not?     A. Yes, sir.

Q. Do you know where he got the money?

A. Yes, sir.

Q. Where?     Borrowed it.

Q. From whom?

A. He borrowed some from Mrs. Turner; he

(Testimony of O. H. Greenwald.)

borrowed some from the Healy-Tibbitts Construction Company.

Q. Do you know where *Mrs. Hickman* was expecting to get the money with which to repay his loan to Mr. Healy? A. No, sir.

Q. Had he made any arrangements with you to borrow that money from the bank on a Master's draft?

A. I don't know anything about it.

Q. From the Wells, Fargo Nevada National Bank?

A. I don't know.

Q. You never knew about that? A. No, sir.

Q. You never went to the bank and told them not to loan the money to Mr. Hickman on the master's draft? A. No, sir.

### **Testimony of M. H. Hickman, for Plaintiff.**

M. H. HICKMAN, recalled for the plaintiff.

Mr. ACKERMAN.—Q. Did you or did you not transfer your interest in the "William Olsen" on the 7th day of December, 1915, to Mrs. Elizabeth Nevins with intent to prefer her over your other creditors? A. Yes, sir, I turned it over.

Q. With intent to prefer her over your other creditors? A. Yes, sir.

Q. The amount of your interest in the "William Olsen" and the amount so transferred was a 75 one hundred and twenty-eighth interest?

A. Yes, sir.

Q. What in your opinion is the value of the "Olsen" at the present time?

(Testimony of M. H. Hickman.)

A. I was holding her—

Q. (Intg.) Answer the question directly.

A. I asked \$18,000 for her. [38]

Q. What in your opinion is the present value of the “William Olsen”?

A. Now?

Q. Yes. A. I should say \$20,000.

Q. You were the managing owner?

A. Yes, sir; that is the entire vessel.

Q. That is, you were the managing owner of the “William Olsen” for sometime prior to the 7th of December, 1915?

A. Yes, sir.

Q. For how long? A. Since December, 1909.

Q. Who is managing owner of the “William Olsen” now?

A. I am.

Q. What interest do you own now in the “Olsen”?

A. One sixty-fourth that I put the valuation of \$12,000 for the vessel.

Q. Whom did you buy it from?

A. A man by the name of English.

Q. When?

A. I think it was April or May; I forget which.

Q. Of this year? A. Yes, sir.

Q. Did you receive a salary as such managing owner?

A. No, sir, I just got a commission on the charter; that is all.

Q. Is the “Olsen” in port? A. No, sir.

Q. Is it chartered? A. Yes, sir.

Q. To whom?

A. William R. Grace & Company.



(Testimony of M. H. Hickman.)

Q. Is it now under voyage on charter to Grace & Company? A. Yes, sir.

Q. Is she going out to sea?

A. Yes, to Port Gamble.

Q. Where is that? A. In Puget Sound.

Mr. ACKERMAN.—I may prove that up under allegation 10.

Mr. LUCAS.—We do not deny it in the answer; so I assume it is admitted.

Mr. ACKERMAN.—At the time you testified before the referee in bankruptcy, which was on February 21st, 1916, I asked you if you were still managing owner and you said no? A. Yes.

Q. I asked you if you managed it and you said no?

A. Yes. [39]

Q. I asked you who managed it. You said Mrs. Nevins and I asked you if you managed it for her and you said yes; is that a correct answer to the question? A. Yes.

Q. Were you at that time the manager of the "Olsen" for Mrs. Nevins?

A. There was nothing to manage.

Q. Did you look out for the details?

A. There were no details to look after, but I think on the 24th I was because there were details cropping up.

Q. For Mrs. Nevins?

A. Yes, sir; I had an offer for a charter.

Q. Mr. ACKERMAN.—Will counsel for the defendant admit that a demand was made upon plaintiff for a retransfer of the property?

(Testimony of M. H. Hickman.)

Mr. LUCAS.—That is admitted by the answer.

The COURT.—Q. The “William Olsen” was worth \$18,000 in December, 1915?

A. I was asking \$18,000 for her; I had an offer of \$13,000 for the entire vessel; boats have advanced since then.

Mr. ACKERMAN.—Q. Do you recall meeting me in I think it was October or November, 1915?

A. Yes, sir.

Q. And being advised by me that I could arrange a sale for the “Olsen”?

A: If I remember, in 1915.

Q. In the latter part of 1915?

A. I should say October, 1915.

Q. Do you remember me advising you at that time that I was going to get about \$15,000?

A. I don't remember.

Q. Did I state to you the name of the purchaser whom I had?

A. In October, 1915, I was in your office and made a payment on account of the mortgage, and subsequent to that you told me, coming in on the car, I think it was, that Henry Moore would have given me \$15,000; but you never gave me any offer.

Mr. ACKERMAN.—That is correct.

Mr. LUCAS.—Q. Has the “Olsen” increased in value a little      A. Ships have advanced.

Q. What is the reason—

The COURT.—We have been threshing that out in every [40] admiralty case we have.

(Testimony of M. H. Hickman.)

Mr. ACKERMAN.—That is the plaintiff's case, your Honor.

Mr. LUCAS.—I wish at this time to move for a judgment for the defendant upon the ground that they did not connect the defendant in this matter with any knowledge. I am satisfied that they have not made out a case.

**Testimony of Mrs. Elizabeth Nevins, for Defendant.**

Mrs. ELIZABETH NEVINS, called for the defendant. Sworn.

Mr. LUCAS.—Q. You are Mrs. Elizabeth Nevins, the defendant in this case?      A. Yes, sir.

Q. Mr. Hickman is your son-in-law?

A. Yes, sir.

Q. Mrs. Hickman is your daughter?

A. Yes, sir.

Q. Where do you live?

A. Part of my time here and part of my time in Vallejo.

Q. Part of the time you live with your daughter?

A. Part with my son.

Q. How long have you known Mr. Hickman?

A. A couple of years before he was married to my daughter.

Q. He was married about twenty years ago?

A. I think it was about twenty years ago.

Q. I will ask you, Mrs. Nevins, if you, on different occasions loaned any money to Mr. Hickman?

A. I have, at my daughter's request.

Q. At your daughter's request?      A. Yes, sir.



(Testimony of Mrs. Elizabeth Nevins.)

Q. Did Mr. Hickman ever come to you personally and ask you for any money?     A. No, he never did.

Q. Did he ever state to you that he wanted any money to use in his business?

A. He never spoke of his business to me. I knew nothing at all about his business.

Q. You knew nothing at all about his business?

A. No, I did not.

Q. Have you considerable means?

A. Well, some.

Q. What is the source of your income?

A. I have rents; I have sugar stock; I have interest money. [41]

Q. During the last 8 or 10 years what has been your average monthly income, about?

A. It has been as high as four hundred or \$500 a month; at present it is less; it is not so much.

Q. About what are your average expenses?

A. I do not have any.

Q. Practically no expense.     A. No.

Q. Who attends to your business affairs?

A. I attend to them myself; I have not very much business.

Q. Have you ever noticed, Mrs. Nevins, any difference in the manner of living at Mr. Hickman's house in the last two or three years—have they lived any different from what they lived before?

A. It is about the same as far as I can see.

Q. Did they live in a comfortable manner?

A. Yes, sir.

(Testimony of Mrs. Elizabeth Nevins.)

Q. They had all the ordinary comforts of life, did they?     A. Yes, sir.

Q. Did anyone ever present any bills to you for that household?     A. Never.

Q. Did you at any time know that Mr. Hickman was in any financial difficulties at all.

A. I never knew anything about his affairs until I saw it in the paper.

Q. When was that?     A. That was in December.

Q. December, 1915?     A. Yes, sir.

Q. What was it that you saw in the paper?

A. Something about bankruptcy, something about a sale of the Bay Shore Drayage Company.

Q. And Mr. Hickman's name was mentioned?

A. I knew it was him from reading it.

Q. That was in the latter part of December, was it, Mrs. Nevins?     A. Yes, sir.

Q. When did you know of his own bankruptcy, when did you first find out about the fact of Mr. Hickman being bankrupt?

A. I read it in the paper.

Q. Your daughter did not mention it?     A. No.

Q. Did Mr. Hickman mention it to you?

A. Never. [42]

Q. You did not know Mr. Hickman was a bankrupt until you read it in the paper?

A. I never knew anything about it.

Q. That was subsequent, was it, to the transfer of Mr. Hickman's interest in the "William Olsen" to you; that was after the transfer?     A. Yes, sir.

Q. I will ask you in the 22 years that you have

(Testimony of Mrs. Elizabeth Nevins.)

known Mr. Hickman, if you had any reason to have anything but absolute confidence in him?

A. No, I always had perfect confidence in him.

Q. The transfer of Mr. Hickman's interest in the "William Olsen"—that was made to you in consideration for the indebtedness that Hickman owed to you; is that correct?

A. That is what he told me.

Q. For the promissory notes—the two sums of money that he owed you on that date. Is that correct? A. I think so.

Q. You have really had no worry in your business affairs? A. Not a particle.

Q. Were you ever engaged in business?

A. Never; my husband was.

Q. In what business?

A. He was in the Mint; and he was in the custom-house service.

Q. Was it ever your habit to discuss business affairs with your husband?

A. No, never; he never had any business affairs; he was employed and paid by the month.

Q. Are you acquainted with any of Mr. Hickman's business associates?

A. No, sir.

Q. Do you know any of the wives or any of the lady relatives of Mr. Hickman's business associates?

A. No, sir, I do not.

Q. Until after you read in the paper that Mr. Hickman was a bankrupt, up to that time had you



(Testimony of Mrs. Elizabeth Nevins.)

any intimation that his financial condition was not sound and solvent?

A. I never suspected it.

Cross-examination.

Mr. ACKERMAN.—Q. You reside part of the time in Vallejo and part of the time in San Francisco, do you? A. Yes, sir.

Q. During the time you are in San Francisco you are with your daughter, and while you are in Vallejo you are with your son? [43] A. Yes, sir.

Q. In what business is your son?

A. He was secretary of the Vallejo Ferry Company for a number of years; at present time I do not know what he is doing.

Q. What salary did your son receive?

A. I do not know; I never asked him; I do not know what salary he received.

Q. Is he married? A. Yes, sir.

Q. Has he any children? A. One.

Q. Are you in the habit of stopping at his house?

A. Yes, sir.

Q. Do you know what salary he received while he was filling that position?

A. I don't know; I was under the impression that he got \$150; I am not sure; I never asked him.

Q. Has your son any interest outside of his position in the Ferry Company? A. He has property.

Q. Where?

A. Some in San Francisco and some in Vallejo.

Q. Do you know what the value of the property in San Francisco is? A. No, I do not.

(Testimony of Mrs. Elizabeth Nevins.)

Q. Do you know what the value of the property in Vallejo is? A. No.

Q. Does he own it jointly with you or alone?

A. Alone.

Q. Did he inherit any money from his father?

A. No, he got most of the money from business that he was in.

Q. Have you given your son any money during the past few years? A. Yes, sir.

Q. How much?

A. Ten or \$12,000; I gave him money to help out to buy a piece of property or something of that kind.

Q. Did he always tell you what he wanted the money for? A. Yes, sir.

Q. Did you give him money to buy the property in San Francisco? A. Yes, sir.

Q. Do you know what he paid for it?

A. I think he paid \$15,000.

Q. Why do you say you do not know what he is worth, when I have asked you what his property is worth?

A. I know what that is [44] worth, the San Francisco property, but not the Vallejo property.

Q. Did you give him money to buy the Vallejo property? A. No, I do not know as I did.

Q. Are you sure that you did not?

A. I gave him money; I do not know what use he put it to.

Q. Do you say that you gave him money for the purpose of purchasing the property that he bought?

(Testimony of Mrs. Elizabeth Nevins.)

A. Yes, the property in the city.

Q. Did he give you a mortgage on the property or security, or anything?      A. No.

Q. Has he ever paid you back?      A. No.

Q. Does he pay you interest on it?      A. Yes, sir.

Q. Regularly?      A. Whenever I want it I get it.

Q. Has it been paid regularly?      A. No.

Q. Whenever you need it you ask for it?

A. Yes, sir.

Q. How often do you ask for it?

A. Whenever I want it.

Q. Is that regularly once a year, or twice a year or three times a year, or what?

A. Whenever it is necessary.

Q. Do you know exactly how much money you have loaned your son?

A. No, I do not think I do exactly.

Q. You do not know how much he owes you at the present time?      A. No.

Q. Do you say he paid you about \$10,000?

A. I suppose it is about that.

Q. Have you any notes for it?      A. No.

Q. Have you any other notes for the indebtedness; how would you find out how much money he owes you?

A. Well, I do not know; I depend on his honor.

Q. You would ask him?      A. Certainly.

Q. Mrs. Nevins, how much money have you; what would you say that you were worth, financially?

A. I could not say.

Q. In order to determine that you would have to



(Testimony of Mrs. Elizabeth Nevins.)

appraise the various stocks that you have; is that a fact?     A. Yes, sir.

Q. Tell me approximately how much money are you worth?     [45]

A. It is kind of hard for me to do that.

Q. It is very embarrassing for me, but please tell me how much money you are worth?

A. Do you mean for how long—how many years; I do not understand what you want me to say.

The COURT.—Q. How much do you regard yourself as being worth, in a general way?

A. Ten or \$15,000.

Q. Ten or \$15,000?     A. Yes, sir.

Mr. ACKERMAN.—Q. You say you have an income of four or \$500 a month—sometimes more sometimes it is less?     A. Yes, sir.

Q. Did you receive that income yourself?

A. I do not get that much income now.

Q. I remember that you did state that it had been reduced. Do you receive what you do receive at the present time—do you get the income yourself?

A. I get some of that income; some of it my son gives me.

Q. How do you get it—by checks?

A. Some of it as rents; my son collects some of the rents.

Q. Who collects the other rents?

A. A gentleman.

Q. Does he deliver the rent to you by mail?

A. Yes, sir.

(Testimony of Mrs. Elizabeth Nevins.)

Q. Do you know how much income your property brings in?     A. About \$100 a month.

Q. How much income do you get on sugar stock?

A. I get \$50 now.

Q. How long has your husband been dead?

A. 15 or 16 years.

Q. During all that time have you looked after your business affairs?

A. No, my son, he has done it.

Q. How old is your son?     A. 43.

Q. Do you remember having said on direct examination that you attended to the business affairs yourself?

A. I do not have much business affairs to attend to.

Q. Do you attend to them, or do you not?

A. My son does.

Q. Then when you said you did attend to your business affairs yourself, you were mistaken.

A. He collects the rents up [46] there and that is about all there is.

Q. You loaned to Mr. Hickman at various times since 1905 considerable sums of money, did you not?

A. Yes, sir.

Q. You took his note sometimes, and other times you did not; is that correct?     A. I guess so.

Q. You do not know, as a matter of fact, whether you did or did not?     A. The statement will show.

Q. He owed you in 1912, \$6,100, that note, with interest?     A. Yes, sir.

Q. The twenty-seven or \$2,800 was due to you by

(Testimony of Mrs. Elizabeth Nevins.)

the Bay Shore Drayage Company?     A. Yes.

Q. This is a total of over \$12,000.     A. Yes, sir.

Q. Wasn't that a large sum of money for a person in your circumstances to loan?

A. Well, I had it, and I gave it to him.

Q. Did you make any inquiries as to whether or not he could repay it?     A. I do not think I did.

Q. Did you ever ask him to pay interest on that money?     A. No.

Q. Did it ever arouse any suspicion in your mind that he paid no amount on the interest since 1905?

A. Yes, he paid me.

Q. When did he pay you money?

A. Some years ago.

Q. How many years ago?     A. I don't remember.

Q. Can you fix the date approximately?

A. No.

Q. Have you a poor memory?

A. I guess I have.

Q. Is it difficult for you to remember back several years?     A. Yes, sir.

Q. You have no idea in what year or month it occurred?

A. No, I could not tell you; he has all the statements.

Q. Did he ever pay you interest on that note of \$6,100 since he gave it to you in 1912?

A. He may have.

Q. Did you ever ask him for any interest on it?

A. No, I never did.

Q. Who would ask you for the money that you



(Testimony of Mrs. Elizabeth Nevins.)

loaned to Mr. Hickman, your daughter?

A. Yes, sir. [47]

Q. What conversation would take place?

A. She would tell me he needed money for equipment or something of that kind.

Q. She came to you quite frequently, did she?

A. Not so very often, only when it was necessary.

Q. Did you make any complaint to your daughter about the amounts that Mr. Hickman was borrowing from you?      A. No, I did not.

Q. Did you think they were rather large?

A. No, I did not give it any thought.

Q. You were never concerned as to whether or not Hickman could pay it back?

A. I expected him to pay it.

Q. Did you ever ask him to pay it back?

A. No.

Q. Did it arouse any suspicion in your mind that Hickman did not pay you interest at any time since 1912?      A. No.

Q. You just took it for granted that he did not pay interest and that he had a good reason, and you did not inquire into it?      A. Yes, sir.

Q. You said that you required no money for your personal need, that you received your income and put it in the bank, that you had no expenses; is that correct?      A. Only for little things that I need.

Q. Personal requirements, clothes and so forth?

A. Yes, sir.

Q. How much money do you spend each month for that?      A. Not very much.

(Testimony of Mrs. Elizabeth Nevins.)

Q. How much?      A. Fifty or \$60.

Q. It only costs fifty or \$60 a month for you to live?      A. Yes, sir.

Q. Is that all the money you spend per month?

A. That is all.

Q. Where do you keep your money—in the bank?

A. Yes, sir.

Q. Do you draw checks?      A. Yes, sir.

Q. You get your checks returned from the bank each month?      [48]

A. Yes, sir, whenever they have them.

Q. Do you examine those checks and see that they are right, and correspond with your bank-book?

A. No.

Q. Your average expenditures per month are about \$50?      A. Yes, sir.

Q. Your checks total over \$50 or \$60 monthly?

A. Somewhere around that; sometimes I might spend more.

Q. Did it ever exceed much more than that?

A. Yes, sometimes it does. Maybe it takes it all.

Q. What do you mean by "All"?

A. All that I have.

Q. How much would that be?      A. \$100 or \$120.

Q. What did you do with the difference between \$100 or \$125 and four or \$500.

A. I mean now; I do not get that much money now.

Q. How much do you get now?

A. I get about—I don't know. I do not get any interest, and of course I get less.

(Testimony of Mrs. Elizabeth Nevins.)

Q. Have you ever been short of money?

A. No, I never have.

Q. I understand you to say that your expenses per month are a minimum of fifty and a maximum of \$120?

A. It all depends on what I buy, where I travel and what I do with it.

Q. The average is \$50 a month; is that correct?

A. Yes, sir.

Q. Have you any home, Mrs. Nevins?      A. No.

Q. You reside alternately with your daughter and your son?      A. Yes, sir.

Q. How much time do you spend with your daughter?

A. Most of the time, I guess; I go up every month to Vallejo and stay for a week or ten days, as long as I want to.

Q. Then you come to your son's house?

A. Yes, sir.

Q. And live with his family?      A. Yes, sir.

Q. Did you ever notice any difference in the way the Hickmans live and the Nevins live?

A. About the same.

Q. During all the time you have been with your daughter during 1915, did you ever say to your daughter, "How is your husband doing," or "How is Mr. Hickman doing"?

A. I do not think I ever asked [49] any questions.

Q. You never displayed any interest?      A. No.

Q. Have they any children?      A. Yes, sir.



(Testimony of Mrs. Elizabeth Nevins.)

Q. Do you ever purchase any clothing or ornaments of any kind for the children?

A. I am always doing that; that is my privilege to buy something, should I wish to.

Q. Have you bought clothes for your daughter?

A. If I see anything I thought she liked I would.

Q. When did you ever buy a dress for her?

A. I don't know.

Q. Tax your memory.

The COURT.—The Court cannot draw any reasonable conclusion from that. It is too common an occurrence for a mother to buy clothes for the children.

(A recess was here taken until 2 P. M.)

#### AFTERNOON SESSION—2 P. M.

Mr. ACKERMAN.—If the Court please, before proceeding further, I should like to have the Court's permission to read a few paragraphs from the opinion of the District Court for the Southern District of New York in the case of Wright vs. Sampter, bearing upon the line the cross-examination has taken in this case. This is an action to set aside a preference. The case is reported in 18 American Bankruptcy Reports, at page 355. The person against whom it was sought to set aside the preference in this case was a niece of the bankrupt. The Court said:

“It has frequently been said in actions turning upon the presence or absence of reasonable cause to believe a material or vital fact, that anything ‘sufficient to excite attention and put a party on inquiry is

(Testimony of Mrs. Elizabeth Nevins.)

notice of everything to which inquiry should have led' and that known facts 'calculated to awaken suspicion' will justify an inference of actual and complete knowledge. In re Knopf, 16 American Bankruptcy Reports, 432; Parker v. Conner, 118 N. Y. 24. [50]

But obviously facts, whether producing certainty or merely suspicion, must have a mind upon which to operate and affect, and the rule is equally well established that it is sufficient if the facts brought home to the person sought to be affected are such as would produce action and inquiry on the part of 'an ordinarily intelligent man' (Bank v. Cook, 95 U. S. 343; Toof v. Martin, 13 Wall. 40); 'a person of ordinary prudence and discretion' (Wager v. Hall, 16 Wall. 584); 'an ordinarily prudent man' (In re Eggert, 4 Am. B. R. 449); 'a prudent man' (Dutcher v. Wright, 94 U. S. 553).

The peculiarity of this case is that the mind to be affected is that of a confiding niece, wholly unacquainted with business knowledge, and however intelligent and prudent in matters within her own experience, incapable of comprehending the significance of business facts, which would have been more than enlightening to men of the business world. It is therefore urged by the defendants that Barbour v. Priest, 103 U. S. 293, justifies the proposition that not only must the facts exist and be sufficiently impressive to make inquiry in such minds as are catalogued in the cases above cited, but they must be sufficient to impress their significance upon the mind

(Testimony of Mrs. Elizabeth Nevins.)

of the person to be affected—in this case a woman leading a life apart from the world of business. It was indeed said in the case last cited (one inducing great sympathy for the preferred creditor) that it is ‘necessary to prove the existence of this reasonable cause of belief \* \* \* in the mind of the preferred party (p. 296).

But those words must be taken in conjunction with the whole opinion, which was written in express consonance with *Grant v. Bank, supra*, and the phrase quoted I take to assume in “the preferred party” the mind of ‘an ordinarily intelligent man.’

It would be intolerable that the voidability of a preference should depend not upon the effect of facts admittedly or by proof known to a defendant, but upon the degree of intelligence or experience which such defendant was capable of exercising in [51] respect thereto; such a rule would put a premium upon ignorance and encourage the assumption thereof.

The rule here applicable is therefore: Would an ordinarily intelligent and prudent business man have had reasonable cause to believe upon any facts known to Miss Sampter that her uncle intended to prefer herself, her sister and mother?”

Mr. ACKERMAN.—It is most unfortunate for plaintiff’s case that we are unable to prove direct knowledge; the proof of facts which would have led an ordinarily prudent business man are clearly applicable to the—



(Testimony of Mrs. Elizabeth Nevins.)

The COURT.—The matter under discussion was whether the item of clothes should be regarded as suspicion and tend to show that she knew or had reason to believe that the husband was insolvent, but I say it does not appeal to me as having such tendency.

Mr. ACKERMAN.—I think it would in the light that she was contributing to the household necessities when possibly Mr. Hickman had not been able to provide those necessities himself.

The COURT.—We will meet that when we come to it.

**Testimony of Mrs. Elizabeth Nevins, for Defendant  
(Recalled—Cross-examination).**

Mrs. ELIZABETH NEVINS, recalled for further cross-examination.

Mr. ACKERMAN.—Q. Mrs. Nevins, were you in the habit, during the past years, of providing any other household goods or household necessities to Mrs. Hickman or Mr. Hickman? A. No.

Q. Did you never purchase things for use in the house?

A. No, I don't think I ever did. I have bought some presents for both families.

Q. Mrs. Nevins, do you recall, at the hearing before the referee in bankruptcy, which was held in this case some months ago, that I asked you the question, "Do you again say that if you wanted to provide for anything like household necessities you did so," and if you answered yes?

(Testimony of Mrs. Elizabeth Nevins.)

A. I bought anything that suited me, if I [52] saw anything I wanted to buy.

Q. You did not make inquiries whether the family could afford to purchase these things for themselves?

A. No, I bought them myself.

Q. Will you tell me the type of conversation that transpired between you and Mrs. Hickman on the occasions when Mrs. Hickman came to you to borrow money for the use of her husband?

A. She would tell me that he needed equipment in his business and ask me for some money, and I gave it to her.

Q. Those times were rather frequent, were they not? A. No.

Q. You loaned him on a number of occasions fifteen hundred or \$1250 and like sums? A. Yes, sir.

Q. Did you make inquiries to see what they were needed for? A. No, I did not.

Q. Did your daughter tell you?

A. No, I don't think she did.

Q. She would simply come to you and say Mr. Hickman needs \$1,250 or \$1,500, can you let me have it? Is that about it? A. Yes, sir.

Q. Didn't you ever say, Mrs. Nevins, what does he need it for? A. No.

Q. What business was Mr. Hickman engaged in during 1915?

A. I do not know what he was doing.

Q. Did he have anything to do, so far as you know, with the Bay Shore Drayage Company?

(Testimony of Mrs. Elizabeth Nevins.)

A. I never asked him, I do not know.

Q. Did you ever loan any money to the Bay Shore Drayage Company? A. Yes, some money.

Q. Who did you give it to?

A. To my daughter.

Q. For what purpose?

A. I supposed for his use.

Q. Did you know that Mr. Hickman was connected with it?

A. Yes, I suppose that he wanted it to buy horses or buy hay.

Q. You said you did not know what business he was engaged in, and that he was in the Bay Shore Drayage Company? A. Yes. [53]

Q. You recall having signed this paper—that is your signature—referring to exhibit No. 2?

A. Yes, sir.

Q. Who asked you to sign that paper?

A. I don't remember—my daughter.

Q. Did you have any discussion with her about this paper at the time?

A. Yes, sir. She told me Mr. Greenwald was going to assist her husband and she wanted me to sign that so that he could get his money first.

Q. Assist her husband in the Bay Shore Drayage Company? A. I suppose so, yes.

Q. Did you read this agreement before you signed it? A. No, I do not think I did.

Q. Do you know what that agreement provides for, Mrs. Nevins? A. I do not know.

Q. Your daughter told you, did she?



(Testimony of Mrs. Elizabeth Nevins.)

A. I don't remember; if I did I do not remember it.

Q. You may look at it, perhaps it will refresh your mind as having seen it before. Would you like me to read it to you, Mrs. Nevins. It states that "this agreement made and entered into this 21st day of January, 1915, by and between Mrs. Lizzie Nevins and M. H. Hickman, parties of the first part, and the Bay Shore Drayage Company, a corporation, party of the second part, and O. H. Greenwald, party of the third part," and it recites that Mr. Hickman is indebted to you in certain amounts, and it provides that for and in consideration of the advances by the party of the third part to the party of the second part of certain sums of money or any sums of money for the purpose of carrying on the business of the party of the second part, the first party hereby gives her written consent to the payment by the party of the second part of the indebtedness of the said party of the second part to the said party of the third part in preference to its indebtedness to the parties of the first part, and the [54] party of the second part agrees that it will repay the indebtedness of the party of the third part in preference to the indebtedness of the parties of the first part; and the parties of the first part hereby agree to defer any action or claim or collection of their said indebtedness against the said party of the second part until the indebtedness of the party of the third part has been paid in full. In other words,

(Testimony of Mrs. Elizabeth Nevins.)

Mr. Greenwald is to be paid first. That is approximately what your daughter told you, is it not?

A. Yes, that is what I understand.

Q. Did that circumstance create any suspicion in your mind that all was not well with Mr. Hickman?

A. No, I never thought anything of it.

Q. It did not occur to you when you were asked, nor did you presume to care that you were allowing someone else who had just put his money in the business, to get his money before you got your money—that did not arouse any suspicion in your mind, any suspicion that business was not going well?

A. What? I don't know.

Q. The question was whether these facts created any suspicion in your mind? A. No, they did not.

Q. Didn't you say to Mrs. Hickman at any time, "Is Mr. Hickman getting along all right"?

A. She did not mention anything about his business to me.

Q. All she said was, "Sign this paper"?

A. She told me Mr. Greenwald was going to assist her, and asked her if I would sign that so he would get his money first; that was the conversation about it.

Q. You knew at that time that Mr. Hickman was in the Bay Shore Drayage Company at that time?

A. Yes, sir.

Q. Did Mr. Greenwald?

A. I never saw Mr. Greenwald until I saw him here to-day.

Q. He testified that he saw you on the boat on the

(Testimony of Mrs. Elizabeth Nevins.)

way to [55] Sausalito; do you recall that occasion?

A. I remember that I was there, but there was a crowd of gentlemen, and I did not know which was Mr. Greenwald.

Q. When did you first hear of Mr. Greenwald's name mentioned in connection with your family?

A. I don't know; I had heard his name spoken of for years.

Q. For a number of years? A. Yes, sir.

Q. What was told you about him?

A. Nothing, nothing much; they had seen him, something of that kind; nothing about any business.

Q. Did your daughter ever come to you in November, 1915, and discuss any business matters in connection with Mr. Greenwald? A. No.

Q. Did she ever ask you to pay any of his obligations, or to go on his note? A. No, she did not.

Q. Never did? A. No.

Q. Do you remember having read in the paper an article which appeared in connection with the suit which had been brought by the Albion Lumber Company against Mr. Hickman? A. No.

Q. You read the newspapers regularly, do you not? A. Yes.

Q. The first knowledge that you had of Mr. Hickman's insolvency was the information you got from the newspapers? A. Yes, sir.

Q. You did not see the item about the Albion Lumber Company suit against him? A. No, I did not.



(Testimony of Mrs. Elizabeth Nevins.)

Q. Is it not a fact that in comparison to the amount of your property, a difference or sum of ten or \$12,000 is quite a large portion of it?

A. No, I have more than that; I think that is what is left remaining to me.

Q. You have about that much left?

A. That is what I think, as near as I can count it.

Q. Did you ever loan money to anyone else?

A. No.

Q. You said you had loaned money to your son?

A. Yes—not outside [56] of my family.

Q. Did you keep any books or statements of account, or papers of any kind?

A. No, nothing of that kind.

Q. Did you give your daughter any money during the last two years, Mrs. Nevins?

A. No, I do not think I did.

Q. Try to remember and be sure?

A. No, I did not.

Q. You did not give her various sums of money during the last two years on different occasions?

A. No.

Q. Mrs. Nevins, I asked you on the occasion I referred to a moment ago, if they had borrowed money from you from time to time for small things, had they not? What is your answer to that question?

A. What do you mean by that,—the small things, what do you mean?

Q. Smaller items than \$100 or \$200.

A. Oh, I don't know; I don't know as they did.

Q. Do you recall having answered that they did at

(Testimony of Mrs. Elizabeth Nevins.)

the hearing before the referee, that they did borrow small amounts of money from time to time?

A. I don't think so.

Q. That is not true that they borrowed small sums of money from you from time to time?

A. I do not think I ever said so.

Q. Do you recall that I asked you on that occasion, if you ever advanced to your daughter any money, and that you replied, "Yes, I gave her money for anything she wanted"?

A. I always gave her money, I have all my life; I always did before she was married.

Q. Since she was married?

A. Before she was married I always gave her everything she wanted.

Q. Do you recall I said to you, "What do you mean, that you gave her an allowance"? To which you replied, no, if she wants a dress if I thought she wants it I gave her the money to buy it.

A. Maybe, it is; I always did do that; anything she wanted I [57] always gave her the money for it, a dress or anything of that kind.

Q. Is it true that you were never sufficiently interested in your son-in-law to make inquiry of him as to whether or not business was good?

A. I always felt that I was the mother-in-law; I did not think it was any of my business.

Q. Did you not think it was some of your business to find out whether the interest had been paid to you? A. No.

Q. Did it not occur to you that if Mr. Hickman had

(Testimony of Mrs. Elizabeth Nevins.)

not been in failing circumstances, it would not have been necessary for him to borrow money from time to time?

A. He needed it for his equipment and his business; he has nobody else to give it to him.

Q. Mr. Hickman testified, and you probably heard it, that you loaned him money to pay his taxes with?

Mr. LUCAS.—I think that is not a correct statement. She gave him money to pay taxes with; he did not say on what property it was to be paid.

Mr. ACKERMAN.—I am quite confident that on December 29, 1915, the sum of \$34.40 was paid by Mrs. Nevins, and Mr. Hickman said she gave him the money for it.

Mr. LUCAS.—It was to pay her taxes; that is the truth of the matter.

Mr. ACKERMAN.—If it were to pay her taxes, it would not appear upon that statement as a charge against Nevins.

Q. Do you know, Mrs. Nevins, what he asked you for money for during the year 1908?

A. No, I do not.

Q. Did you know that he was in the plastering business? A. No, I did not.

Q. You loaned him \$1,250 on February 15, 1908, a like amount on February 21st, 1908, \$500 on October 17th of the same year, and [58] \$500 on October 24th of the same year, all of which was used in the plastering business; you never knew anything about that plastering business? A. No, I did not.



(Testimony of Mrs. Elizabeth Nevins.)

Q. Did Mr. Hickman ever offer to pay any money back that you loaned?

A. Yes, he has paid me back lots of times.

Q. Since 1912?

A. I don't remember,—he gave me money or a check.

Q. Do you remember receiving any money from him then since 1912?

A. I cannot say; I don't know.

Q. Did he ever speak to you and explain to you why he could not pay the interest on that note?

A. No.

Q. Did he ever say to you, "I hope to be able to pay some portion of the money that I owe, at a certain time"?

Mr. LUCAS.—That is objected to.

The COURT.—The objection is overruled.

A. We never discussed business at all.

Q. Will you kindly answer the question yes or no?

A. No.

Q. You testified, I believe, on direct examination, that you did not know of Mr. Hickman's business acquaintances or business friends, or their wives; is that correct?

A. I know Mr. Masterson.

Q. Who is Mr. Masterson?

A. He used to be a partner of Mr. Hickman.

Q. How well did you know him?

A. I just met him occasionally; not very well.

Q. How long have you known him?

A. Since Mr. Hickman married my daughter.

(Testimony of Mrs. Elizabeth Nevins.)

Q. Were they in business together at that time?

A. Yes, sir.

Q. Did they since go out of business?

A. Yes, sir.

Q. Why?      A. I don't know.

Q. When did they go out of business?

A. I don't know that. [59]

Q. What business were they in?

A. They were in the lumber business.

Q. You knew about their business at that time?

A. Yes, sir.

Q. Do you know why they dissolved partnership?

A. I don't know.

Q. Do you know whether or not their business was profitable?

A. I could not say; I never asked any questions.

Q. Did you know that Mr. Hickman was the owner of the schooner "William Olsen"?      A. Yes, sir.

Q. How long have you know that?

A. I knew it at the time I bought the interest myself.

Q. Do you know whether that was a profitable enterprise or not?      A. I left it to him.

Q. Did he ever tell you?

A. I knew that the vessel was not making money for a long time.

Q. Who told you that?

A. I knew it from hearing different people talk about it.

Q. Who did you hear talk about it?

(Testimony of Mrs. Elizabeth Nevins.)

A. I don't know; I have more or less interest in the boat business.

Q. Do you remember any occasion that you heard anyone discuss the "William Olsen"?

A. I don't think I ever did; I don't know anybody interested in the "Olsen" except Mr. Hickman.

Q. Did Mr. Hickman ever speak to you about it?

A. No.

Q. Where did you get the information that the "Olsen" was a losing proposition?

A. Because I heard about other boats for sale, and I knew that times were hard; I had sense enough to know that.

Q. Did you make any inquiries from Mr. Hickman as to how the "Olsen" was getting on?

A. No; I knew if there was anything he would tell me.

Q. He would tell you?

A. If there was anything to tell he would. [60]

Q. I thought you never discussed business with him?

A. I never did; he would tell me if there was anything to tell.

Q. Why did he tell you that thing,—did you know about the Bay Shore Drayage Company?

A. He was interested in it.

Q. Why were you interested in the "Olsen" particularly? A. Because I had some money in it.

Q. How much?

A. Two-eighths or one-eighth or two-eighths.

Q. When did you buy it?



(Testimony of Mrs. Elizabeth Nevins.)

A. A little while after she was built.

Q. Were you the owner of record of one-eighth or two-eighths interest at the time you bought Mr. Hickman's share? A. Yes, sir.

Q. Did Mr. Hickman ever tell you from time to time how the "Olsen" was getting on?

A. When he had a dividend to pay he spoke of it.

Q. Did you know there was a mortgage on the "William Olsen"? A. No, I did not.

Q. Did you make any inquiries of Mr. Hickman about the "William Olsen" before you purchased it in December, 1915?

A. No, I never spoke anything about it.

Q. You never spoke to him about it at all?

A. The first I knew about it was when he told me he transferred the stock to me.

Q. You did not know anything about it before that time? A. No.

Q. You never requested him to do it? A. No.

Q. Do you know whether or not your son paid off the mortgage on the "William Olsen"?

A. I know it now because he told me of it.

Q. When did you first hear of it?

A. When I went up to Vallejo he told me of it.

Q. Was that after December, 1915?

A. It was along this spring.

Q. Are you acquainted with Mrs. Turner?

A. Yes, sir.

Q. Do you know whether or not Mrs. John Turner holds a mortgage on the "Olsen"?

A. She never discussed it with me.

(Testimony of Mrs. Elizabeth Nevins.)

Q. At your house?      A. No. [61]

Q. Do you know whether or not Mr. Hickman owes any money to the Turners?      A. No.

Q. Did you make any inquiries whatever as to how much was due creditors of the vessel—as to how much the vessel owed in December, 1913?

A. I never asked any questions at all; I had full confidence in him; I left everything to him.

Q. You did not know whether or not that vessel owed more than she was worth?

A. No, I did not.

Q. Did you know that Mr. Hickman was engaged in the warehouse business in December, 1910?

A. No, I did not.

Q. What business did you suppose he was in from 1910 to 1913?      A. I did not know.

Q. You did not know?

A. I did not know anything about his affairs at all—he never talked about his affairs.

Q. Did you know he was in the lumber business?

A. Yes, sir.

Q. When was he in the lumber business?

A. He was in the lumber business when he married my daughter I think—about that time.

Q. Will you explain, please, how it happens that you know he was in the lumber business and the schooner business and did not know that he was in the plastering business?

A. He never spoke about it.

Q. He told you about the lumber business?

A. I knew it myself.

(Testimony of Mrs. Elizabeth Nevins.)

Q. How did you find it out?

A. Somebody told me.

Q. Can you remember who?

A. It was 19 or 20 years ago, I don't remember.

Q. What business was he in with Masterson?

A. The lumber business; they were partners.

Q. Do you know where their place of business was?     A. Yes, sir.

Q. Did you ever visit there?

A. I don't think I did.

Q. Did you ever visit Mr. Hickman down there during the last few years?

A. Yes, sir, I was in his office on Market Street [62] in the Santa Marina Building several times.

Q. When was that?

A. My daughter would go down and meet him and go out to dinner.

Q. What did it say on the door?

A. I could not tell you; I forget.

Q. You cannot remember what it said on the door?

A. No.

Q. Did he have one room or two rooms?

A. That time he had two; another time he had one room.

Q. Did he have anyone in his employ down there?

A. Yes, sir.

Q. Who?     A. Mr. Kern, Mr. Thompson.

Q. Did you regard it as at all strange that he had one room at one time and another room at another time?

A. No, it did not cause me any thought.



(Testimony of Mrs. Elizabeth Nevins.)

Q. It did not cause you any reflection?

A. No, sir.

Q. You do not remember what it said on the door?

A. No.

Q. Did the inscription on the door indicate what kind of business he was in,—did it say lumber business or shipping, or Bay Shore Drayage Company, or what? A. That I cannot tell you.

Q. Does Mr. Hickman and Mrs. Hickman associate with your son, Mrs. Nevins? A. Yes, sir.

Q. Frequently? A. Yes, sir.

Q. Does he come to your son's and visit them occasionally? A. Yes, sir.

Q. Did you ever know anything about the progress, financial or material, of the Hickmans—did he ever say anything concerning the financial progress of the Hickmans?

A. No, and nothing in a business way, just spoke about my daughter's health or something, or about the little boy; never in a business way.

Q. I am referring particularly to business affairs. Did he ever observe to you or you observe to him whether they were [63] going along well?

A. How do you mean, if they were happy?

Q. If they were getting along well in the world?

A. I had every reason to think they were; he never discussed it.

Q. What reason did you have to think they were?

A. Everything was going along very pleasantly; everything was pleasant and happy, when I was there.

(Testimony of Mrs. Elizabeth Nevins.)

Q. Refer please just to the financial side—was there anything to indicate that they were getting along well financially?

A. Everything is always about the same.

Q. Did you ever make any observation to yourself or to your son regarding that feature of it?

A. No, I never did.

Q. Do you know whether or not your son advanced to Mr. Hickman the money necessary to pay off the Turner mortgage?

A. Yes, I think he did; he advanced some money.

Q. Then you did know there was a mortgage on the vessel? A. Yes, sir, he told me since.

The COURT.—She said she learned it in the spring of this year.

Mr. ACKERMAN.—Q. What time?

A. In April or May.

Q. Did you know when your son advanced the money on the “Olsen”?

A. No, I could not tell you.

Q. Did you find out from your son that he had loaned the money to take up that mortgage?

A. Yes, sir.

Q. Did he tell you shortly after he did it?

A. Yes, sir.

Q. When did you go to Vallejo in 1915?

A. I go up there every month—maybe oftener.

Q. He told you about having taken it up the next time you paid a visit up to Vallejo?

A. Yes, sir.

Q. Do you remember when that was?

(Testimony of Mrs. Elizabeth Nevins.)

A. That was somewhere around January or February; I think it was in February; I did not go up in January. [64]

Q. Did you go up there in November?

A. No, I do not think I did.

Q. Did you go up in October?

A. I might have.

Q. Was it not your habit to go up there and spend two weeks out of each month?

A. Not all of the time.

Q. Are you quite sure you were not there in November?

A. I don't remember being there in November.

Q. Did you not see your son at any time during November?     A. I would not be sure.

Q. Was it your impression that he told you about this mortgage on the "Olsen" the first time he saw you after he had loaned Mr. Hickman this money?

A. I think it was.

Q. Your daughter has been ill from time to time with asthma, has she not?

A. Yes, sir, for the last couple of years.

Q. And been at the hospital on various occasions?

A. Yes, sir.

Q. Did you pay the hospital bills?     A. No.

Q. Never paid any expenses at the hospital?

A. No, I do not think I did.

Q. Are you sure?

A. Yes, sir, he paid all the bills.

Q. Did you pay the nurse?     A. No.

Q. Or the doctor?     A. No.



(Testimony of Mrs. Elizabeth Nevins.)

Q. Are you sure? A. Yes.

Q. Did you keep checks in which you recorded all such expenditure? A. No.

Q. How did you pay the money, by check, did you carry money around with you?

A. When I had it I paid it.

Q. Do you carry large sums of money about with you? A. No.

Q. Are you quite positive that you never paid any hospital expenses in connection with your daughter's illness? A. I don't think I ever did.

Q. Are you sure? A. I am pretty sure. [65]

Q. You never made any inquiry of Mr. Hickman to see what he was using the money for that he borrowed from you? A. No.

Q. You do not know whether he was using the money to pay out little bills of business?

A. No, I don't know.

Q. Did Mr. Hickman ever ask you to loan him the money to take up the mortgage on the "Olsen"?

A. No.

Q. You discussed the "Olsen" with Mr. Hickman, did you not?

A. Not until lately; we had talked lately.

Q. During the year 1915?

A. No, I don't think I ever did.

Q. You had some interest in the "Olsen"?

A. Yes, sir.

Q. You never made any inquiry about your one-eighth share?

A. No, because I had confidence in him; I knew

(Testimony of Mrs. Elizabeth Nevins.)

he would do what was right. I had confidence in him.

Q. Who asked you to loan the money to the Bay Shore Drayage Company? A. My daughter.

Q. Did you ever ask her when she requested a loan of money from you, what they needed the money for? A. She told me.

Q. What did she say?

A. She said that Mr. Greenwald was going to assist them, but he wanted to get his money first.

Q. I am referring to the occasion when you loaned the money, did you make inquiry or were you told what the Bay Shore Drayage Company needed money for? A. At what time?

Q. I understand it was within the last few years.

A. I suppose to buy equipment.

Q. On what do you base that supposition? Were you ever informed what it was needed for?

A. No, I knew that he was starting out in business and that he needed it.

Q. You say that you are in the habit of periodically paying visits to Mr. Hickman at his office; did you pay such visits during 1915?

A. I don't think I was ever there during 1915.

Q. You never visited *in* in 1915?

A. I don't think so. [66]

Q. Did I understand you correctly when I understood you to say that you made occasional visits to his office in company with Mrs. Hickman?

A. Yes, sir.

Q. That was not in the year 1915?

(Testimony of Mrs. Elizabeth Nevins.)

A. No, because I was most of the time at the Fair.

Q. Did you never on any occasion in 1915 visit him?

A. I had no occasion to; I was always home.

Q. Did you ever go down there with Mrs. Hickman? A. I don't remember of it.

Q. Do you remember where his office was during 1915? A. No, I do not.

Q. Did you ever ring him up on the telephone?

A. I do not think I did.

Q. Are you sure?

A. I do not remember of ringing him up.

Q. If somebody asked you where they could reach Mr. Hickman down there, you could not tell them?

A. Not after he left the Santa Marina Building.

Q. When did he leave? A. I don't know.

Q. When did you last visit him at that building?

A. I don't know. A couple of years ago I guess.

Q. Has Mr. Hickman always been a good husband, as far as you know? A. Always, yes.

Q. Did Mrs. Hickman ever appear to you to be worried or concerned about anything?

A. No, I don't think she did; I never could tell it on her; I always thought since that was probably the cause of her sickness.

Q. You never knew at the time she looked worried or seems worried?

A. No, she was sick; I knew that.

Q. How old are you Mrs. Nevins?

A. Sixty-four years last April.

Q. Did you have any occupation prior to your



(Testimony of Mrs. Elizabeth Nevins.)

marriage? A. No. [67]

Q. You were always a woman of leisure?

A. Yes, sir.

Q. When your husband was in business did you ever assist him? A. He was never in business.

Q. He held some official office? A. Yes, sir.

Q. What official position did he hold?

A. He was foreman in Mare Island; he was in the custom-house, and in the Mint.

Q. What business was Mr. Hickman in during the year 1915? A. I don't know.

Q. You don't know anything about it? A. No.

Q. What did you think when you saw this agreement, "Exhibit No. 2" which you signed?

A. I knew he was in the Bay Shore Drayage Company, if that is what you mean?

Q. Yes. A. That is all I did know.

Q. Did you know your daughter was a stockholder in the Bay Shore Drayage Company?

A. Yes, sir.

Q. Did you ever ask her how the Bay Shore Company was getting on? A. No.

Q. You were not interested in that? A. No.

Q. If you had been asked during 1915 whether the Bay Shore Drayage Company was doing well or poorly, you could not have replied?

A. No, I knew nothing about it.

Q. Where do you keep that note that Mr. Hickman gave you for \$6,100 in 1912?

A. In a box in the safe deposit.

Q. Did anyone else have access to that box?

(Testimony of Mrs. Elizabeth Nevins.)

A. Yes.

Q. Who?      A. My daughter.

Q. What papers do you keep in that box?

A. Oh, insurance papers.

Q. What kind of insurance?

A. Fire insurance.

Q. Anything else?

A. Oh, one thing and another.

Q. Any deeds?      A. Yes, sir.

Q. What else?      A. I guess that was all. [68]

Q. Any tax receipts?

A. Yes, sir, I guess there were some there too.

Q. Some sugar stock?      A. Yes, sir.

Q. Then it is a fact that you were attending to your own business affairs, of what property was in your own possession?      A. Yes, sir.

Q. Do you know whether or not your son knew anything about Mr. Hickman's affairs?

A. I know he did not.

Q. How do you know?      A. He told me so.

Q. You must have discussed it?

A. I asked him if he knew anything about it.

Q. Prior to the year 1915 did you ever discuss it with him?      A. No, sir.

Q. How do you know he never knew about it yourself?

A. He told me so; I mean about this last business.

Q. I refer entirely to 1915.

Q. You knew it subsequent to that time?

A. It was this spring I spoke to him about Mr. Hickman's business.

(Testimony of Mrs. Elizabeth Nevins.)

Q. Do you know whether or not he knew anything about Mr. Hickman prior to the year 1915?

A. I do not think he did.

Q. How do you know?

A. He never spoke about it if he did.

Q. Did you ever get a dividend from the "William Olsen"?

A. Yes, sir, some years ago.

Q. Do you know enough about the "William Olsen" to say how she is doing, how much money the vessel owes, or how much is to her credit?

A. No.

Q. Were you managing owner of the "William Olsen"?

A. No.

Q. In 1916, after the transfer to you of the Hickman interest?

A. Yes.

Q. What did you do as managing owner?

A. Mr. Hickman is my agent.

Q. He acted as your agent?

A. Yes, sir.

Q. Did you sign the checks?

A. I do not think there was any checks. [69]

Q. Did you sign a card or the card at the bank authorizing you to sign checks?

A. I signed something at the bank; I suppose it was that.

Q. You did not read it?

A. It was something about—

Q. Do you know whether or not you read it?

A. Yes, sir, I did, but I cannot remember it.

Q. Why did you transfer your stock in the Bay Shore Drayage Company?



(Testimony of Mrs. Elizabeth Nevins.)

A. I did not know that the stock was out of my possession until lately.

Q. You never took any interest in the affairs of the Bay Shore Drayage Company? A. No.

Q. Were you impressed with the fact when you saw this paper marked "Exhibit No. 2," that the Bay Shore Drayage Company was in some financial difficulty? A. No, I was not.

Q. Do you suppose Mrs. Nevins, that people borrow money if they don't need it.

A. I suppose he wanted it.

Q. Do you say that you first found out about the "William Olsen" and the mortgage on the "William Olsen" this spring? A. Yes, sir.

Q. I will call your attention to the testimony that you gave on February 21st, 1916: did you advance the money necessary to pay off the mortgage on the "William Olsen"? A. No, I did not.

Q. Did he, do you know?

A. My son was not—

Q. —Just answer if you know,—if you do not know say so? A. No.

Q. You do not know whether it was your son or not? A. I understand it was my son.

Q. Who told you? A. Mr. Hickman.

Q. You must have had this information in February, 1916? A. Maybe I did; my son did too.

Mr. LUCAS.—That is the spring of 1916.

Mr. ACKERMAN.—Q. You did not make any inquiries of anyone at all [70] as to whether or not it was your son who loaned your money to Mr. Hick-

(Testimony of Mrs. Elizabeth Nevins.)

man? A. No, I did not ask anybody.

Q. Did you ever ask your son? A. No.

Q. Did your son ever ask you if Mr. Hickman had paid back any of the money? A. No.

Q. Does he know how much money Mr. Hickman owes you? A. I don't think so.

Q. Is your son in court? A. No, sir.

Redirect Examination.

Mr. LUCAS.—Q. Mr. Ackerman just asked you about your safe deposit box, Mrs. Nevins: you said that both you and your daughter had access to it?

A. Yes, sir.

Q. As a matter of fact who went to that safe deposit box most frequently, you or your daughter?

A. My daughter.

Q. I will ask you whether or not you wanted to go into the bank and get in the safe deposit box, and they really did not know you and hesitated to let you gain admission to your own box; is that true?

A. Yes, sir.

Q. Counsel brought out on cross-examination something about your personal wealth; how much money have you in the bank at the present time?

A. I have about \$4,300.

Q. Have you had less than that amount in the bank at any time during the last 8 or 10 years that you can remember?

A. That is the smallest I ever had.

Q. Have you any real property? A. I have.

Q. Where is it?

A. In Vallejo, and some in San Francisco.

Q. How much real property in Vallejo; what does

(Testimony of Mrs. Elizabeth Nevins.)

your Vallejo real property consist of?

A. A house and two lots, on the main street.

Q. Does it bring in any income?

A. Yes, sir, about \$70 a month.

Q. Is it business property or residential property?

A. It is residential property. [71]

Q. What do you believe it is reasonably worth?

A. I suppose ten or \$11,000.

Q. Have you any real property in San Francisco?

A. One piece.

Q. Where is it?

A. On Page Street, 1767 Page Street.

Q. Does it bring you in any income?

A. Yes, sir.

Q. How much?

A. I think \$42. \$40, and then I have to pay the water bill.

Q. What is that worth, roughly?

A. I suppose about \$8,000.

Q. Does anyone owe you any money; does your son owe you any money? A. Yes, sir.

Q. How much? A. \$15,000.

Q. Have you any stocks? I think you testified that you had some stock? A. Yes, sir.

Q. What stocks have you?

A. Paauhan and Hawaiian sugar stock.

Q. How many shares of Paauhan and Hawaiian sugar stock have you?

A. 50 of each and 50 of Hutch.

Q. How much do your sugar stocks bring you in?

A. At present they bring in \$50 a month.



(Testimony of Mrs. Elizabeth Nevins.)

Mr. ACKERMAN.—Q. What is Hutch sugar stock quoted at?

Mr. LUCAS.—Hutch averages from 27 to 32, and back. I think now they ask about 27 for it. Paauhan is around 30, I am sure of that.

Mr. LUCAS.—Q. You also had an interest in the steamer "Olsen" before the interest was transferred to you recently? A. Yes, sir.

Q. Where did you get your property from originally,—how did it come to you?

A. From my father.

Q. From your father? A. Yes, sir.

Q. What did your father leave upon his death?

A. He had a franchise for the ferry running from Vallejo to Mare Island.

Q. Was that a valuable franchise? A. Yes, sir.

Q. It brought considerable income, did it?

A. Yes, sir.

Q. Who did he leave that to?

A. He left it to my brother and my son and myself.

[72]

Q. In what proportion? A. One-third each.

Q. One-third of that franchise to you, one-third to your brother, and onethird to you son who lives in Vallejo; is that correct? A. Yes, sir.

Q. Then did he leave you some other property?

A. Yes, sir; he left money and a home.

Q. He left a will, did he?

A. He left me some property in San Francisco. He deeded the property.

Q. Did he ever give anything to your daughter?

(Testimony of Mrs. Elizabeth Nevins.)

A. No, sir.

Q. Never did? A. No.

Q. He gave her no part of the franchise?

A. No.

Q. And no other property, either deeded it or by will; is that correct? A. Yes, sir.

Q. But he did give property to your son?

A. Yes, sir.

Further Cross-examination.

Mr. ACKERMAN.—Q. What is the size of the property on Page Street?

A. It is a 25 foot lot.

Q. What is its depth?

A. I don't know; 137 feet, I think.

Q. Do you know what the assessed value of that property is? A. No.

Q. Do you know how much taxes you pay on it?

A. I don't know—\$80 a month.

Q. What value do you place on your interest in the "Olsen"?

A. I don't know what the value is; I know what I paid for it.

Q. How much? A. \$3,000.

The COURT.—Q. For a one-eighth interest? Was it a one-eighth interest? A. Yes, sir.

Mr. ACKERMAN.—Q. That is correct, one-eighth interest \$3,000, is it not?

A. Is that not what I paid?

Q. If you do not know, Mrs. Nevins, just say so. I believe that is all, Mrs. Nevins.

Defendant rests. [73]

[Endorsed]: Filed Nov. 16, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [74]

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[Title of Court and Cause and Number.]

**Opinion and Order to Enter Judgment for the Defendant.**

LLOYD S. ACKERMAN, Esq., Attorney for Plaintiff.

W. F. SULLIVAN, Esq., and H. C. LUCAS, Esq., Attorneys for Defendant.

The defendant is the mother-in-law of the bankrupt, lent him money from time to time as her daughter requested her to, paid no attention to his business affairs, trusted him and her daughter absolutely, and there is nothing in the evidence that would warrant the Court in finding that she had reasonable cause to believe, or even to suspect that her son-in-law was insolvent at the time of the transfer which the plaintiff seeks to set aside.

Judgment will therefore be entered for defendant.  
October 4th, 1916.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Oct. 4, 1916. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [75]

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[Title of the Court and Cause and Number.]

**Judgment for Defendant.**

This cause having come on regularly for trial on the 30th day of June, A. D. 1916, being a day in the



March term of said Court, before the Court sitting without a jury, a trial by jury having been especially waived by stipulation of the attorneys for the respective parties, Lloyd S. Ackerman, Esq., appearing as attorney for the plaintiff and W. F. Sullivan, Esq., appearing as attorney for the defendant; and the trial having been proceeded with and evidence oral and documentary upon behalf of the respective parties having been introduced and closed, and the cause, after arguments of the attorneys, having been submitted to the Court for decision;

NOW, AFTER DUE CONSIDERATION AND DELIBERATION HAD THEREON, It is by the Court ordered that by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that plaintiff take nothing by this action and that defendant go hence without day; further ordered that defendant recover her costs herein expended, taxed at \$11.50.

Judgment entered this 4th day of October, A. D. 1916.

W. B. MALING,  
Clerk.

By C. W. Calbreath,  
Deputy Clerk.

Entered in Judgment and Decree Book 7, at Page 52. [76]

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[Title of the Court, Cause and Number.]

**Petition for Appeal and Order Allowing Appeal.**

J. W. Marshall, trustee of the estate of N. H.

Hickman, bankrupt, plaintiff in the above-entitled action, considering himself aggrieved by the Judgment and Order made and entered herein on the 4th day of October, 1916, in the above-entitled action wherein and whereby it was adjudged and decreed that the plaintiff take nothing by his complaint and that the defendant have Judgment for her costs, does hereby appeal from such Judgment and Order to the United States Circuit Court of Appeals, for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herein, and he prays that this appeal may be allowed and that a transcript of the proceedings and papers upon which said Judgment and Order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated San Francisco, California, October 20, 1916.

LLOYD S. ACKERMAN,

Attorney for Plaintiff and Appellant.

The foregoing petition for appeal is granted and the claim of appeal herein is allowed.

Dated October 20, 1916.

M. T. DOOLING,

United States District Judge.

[Endorsed]: Filed Oct. 20, 1916. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [77]

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[Title of the Court, Cause and Number.]

**Assignment of Errors on Appeal.**

Comes now the above-named plaintiff and appellant, by Lloyd S. Ackerman, his attorney, and files

the following assignment of errors upon which he will rely upon his appeal from the Judgment and Order entered herein on the 4th day of October, 1916:

1. That the District Court of the United States, in and for the Northern District of California, erred in ordering that the plaintiff take nothing by his complaint.

2. That the said Court erred in ordering Judgment for the defendant and awarding defendant costs.

3. That the said Court erred in its finding or decision that the above-named defendant did not have reasonable cause to believe that the transfer or conveyance of the property described in the complaint, to her, by the bankrupt, would result in a preference.

4. That the said Court erred in that it did not adjudge that the transfer of the 73/128 interest in the schooner "William Olsen" by the bankrupt, N. H. Hickman, to the defendant, was an unlawful preference.

5. That the Court erred in that it did not adjudge that the said transfer be annulled and set aside.

6. That the said Court erred in that it did not adjudge that defendant be directed to make, execute and deliver to plaintiff a reconveyance or transfer of said 73/128 interest in said schooner "William Olsen."

7. That said Court erred in that it did not adjudge that the plaintiff have Judgment against the defendant for the value of said interest so unlawfully transferred. [78]



8. That said Court erred in refusing to decree that the defendant be required to account for the rents, issues and profits of said interest in said schooner from the 7th day of December, 1915.

9. That the said Court erred in that its Judgment was contrary to the evidence.

WHEREFORE the said plaintiff prays that the said Judgment and Order be reversed and that the said District Court of the United States, in and for the Northern District of California, may be ordered to enter an Order reversing said Order and Judgment and awarding the relief prayed for in the complaint in this action with costs to the plaintiff.

Dated October 20, 1916.

LLOYD S. ACKERMAN,  
Attorney for Plaintiff and Appellant.

[Endorsed]: Filed Oct. 20, 1916. W. B. Maling,  
Clerk. By Lyle S. Morris, Deputy Clerk. [79]

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[Title of the Court and Cause and Number.]

**Admission of Service of Citation on Appeal.**

The above-named defendant admits due receipt of a copy of Citation on Appeal in the above-entitled action, original of which was filed in the District Court of the United States, in and for the Northern District of California, on the 25th day of October, 1916.

W. F. SULLIVAN, and  
H. C. LUCAS,  
Attorneys for Defendant.

[Endorsed]: Filed Oct. 31, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [80]

[Title of Court and Cause and Number.]

**Stipulation for Diminution of Record.**

It is hereby stipulated and agreed by and between the attorneys for the plaintiff and defendant that the clerk of the above-entitled court in following the praecipe on file may omit the full title of the court and cause, except upon the praecipe, and thereafter refer to same simply as "Title of the Court and Cause."

It is further stipulated that the clerk may omit all verifications and refer to same as "duly verified."

It is further stipulated that the clerk may omit from the transcript the Demurrer and the Order Overruling Demurrer.

Dated October 24th, 1916.

LLOYD S. ACKERMAN,  
Attorney for Plaintiff.

W. F. SULLIVAN,  
H. C. LUCAS,

Attorneys for Defendant.

[Endorsed]: Filed Oct. 25, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [81]

At a stated term of the District Court of the United States of America for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 31st day of October, in the year of our Lord, one thousand nine hundred and sixteen. Present: The Honorable MAURICE T. DOOLING, District Judge.

[Title of Cause and Number.]

**Order Transmitting Original Exhibits.**

Upon stipulation presented therefor, the Court ordered that in making up the transcript on appeal herein, the clerk may omit the exhibits introduced in evidence at the trial, on behalf of plaintiff and defendant, and may transmit to the clerk of the United States Circuit Court of Appeals the original exhibits in lieu of copying the same in said record. [82]

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[Title of the Court and Cause and Number.]

**Order Extending Time to File Appeal.**

Good cause appearing therefor, it is hereby ordered that the plaintiff in the above-entitled action may have fifteen days from date hereof within which to file transcript on appeal.

Dated November 21, 1916.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Nov. 22, 1916. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [83]



**Certificate of Clerk, U. S. District Court to  
Transcript on Appeal.**

I, WALTER B. MALING, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 83 pages, numbered from 1 to 83, inclusive, contain a full, true and correct Transcript of certain records and proceedings in the case of J. W. Marshall, Trustee of the Estate of N. H. Hickman, bankrupt, vs. Elizabeth Nevins, No. 15,986, as the same now remain on file and of record in this office; said Transcript having been prepared pursuant to and in accordance with "Praeceptum for Transcript of Record for Use on Appeal" (copy of which is embodied in this transcript), and the instructions of Lloyd S. Ackerman, Esq., Attorney for Plaintiff herein.

I further certify that the cost for preparing and certifying the foregoing Transcript on Appeal is the sum of Forty-five Dollars (\$45.00), and that the same has been paid to me by the attorney for the appellant herein.

Annexed hereto is the Original Citation on Appeal issued herein. (Page 85.)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 29th day of November, A. D. 1916.

[Seal]

WALTER B. MALING,  
Clerk.

By T. L. Baldwin,  
Deputy Clerk. [84]

**Citation on Appeal—Original.**

United States of America,—ss.

The President of the United States to Elizabeth Nevins, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Northern District of California, wherein J. W. Marshall, trustee of the estate of N. H. Hickman, bankrupt, is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States District Judge for the Northern District of California, this 25th day of October, A. D. 1916.

M. T. DOOLING,  
United States District Judge. [85]

[Endorsed]: No. 15,986. United States District Court for the Northern District of California. J. W. Marshall, Trustee, Appellant, vs. Elizabeth Nevins. Citation on Appeal. Filed Oct. 25, 1916. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk.

[Endorsed]: No. 2892. United States Circuit Court of Appeals for the Ninth Circuit. J. W. Marshall, Trustee of the Estate of N. H. Hickman, Bankrupt, Appellant, vs. Elizabeth Nevins, Appellee. Transcript of the Record. Upon Appeal from the Southern Division of the District Court of the United States for the Northern District of California, First Division.

Filed December 5, 1916.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.